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# ROAD DAMAGE AND SAFETY EFFECTS OF OVERWEIGHT TRUCKS CARRYING INTERMODAL CONTAINERS

(101-71)

## HEARINGS

BEFORE THE

SUBCOMMITTEE ON
INVESTIGATIONS AND OVERSIGHT

OF THE

COMMITTEE ON
PUBLIC WORKS AND TRANSPORTATION
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

JUNE 27, 28; SEPTEMBER 13, 1990

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# ROAD DAMAGE AND SAFETY EFFECTS OF OVERWEIGHT TRUCKS CARRYING INTERMODAL CONTAINERS

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WEDNESDAY, JUNE 27, 1990

House of Representatives,
Subcommittee on Investigations and Oversight,
Committee on Public Works and Transportation,
*Washington, DC.*

The subcommittee met, pursuant to call, at 10:15 a.m., in room 2154, Rayburn House Office Building, Hon. Glenn M. Anderson (chairman of the subcommittee) presiding.

Mr. Anderson. The meeting of the committee will come to order.

Today's hearing will examine the use of intermodal containers. The development of intermodalism has had a major impact on many segments of our national and international economy. The use of intermodal containers has revolutionized the way cargo is handled in this country and all over the world.

Unfortunately, some containers are loaded so heavily they disrupt the flow of commerce and pose serious road damage and safety problems with their movements over the Nation's highways. It is those containers on which we focus today.

The cargo shipped in these containers may meet the weight limitation for the strength of the container it is put into, the capacity of the ship it is carried on, the lift limits of the cranes at the ports, the road limit of the rail car it is transferred to, and yet be classified as "overweight" and in violation of Federal or State laws when put on a truck chassis and hauled on the public highways.

Ironically, when this situation occurs, it may only make up one percent, 100 miles, of a 10,000-mile, 12-day journey between the Far East and Chicago, but it is still overweight.

Transportation costs can be as much as 10 percent of the purchase price for some commodities. If intentional overloading is taking place, those who do so are effectively lowering per unit prices for transportation, achieving an unfair advantage in the marketplace.

We do not want to create a special category of "super citizens" who can move heavier loads for a competitive advantage over the overwhelming majority of businessmen whose cargoes move legally over the Nation's highways.

On this committee, we fully appreciate the importance of trucks in transporting intermodal containers to and from loading and unloading points and between marine and rail terminals. They are critical links in the movement of commerce through our ports.

However, we also understand the importance of preserving the structural integrity of our highway network, and this committee's vital mission of assuring the safe use of that network. So, we cannot permit overweight container movements and the related damage to highway pavements and bridges and truck handling and braking to go unchecked.

The next two days of hearings will attempt to answer these difficult questions: How extensive is the problem? How can these movements best be controlled? What agency, if any, should bear the burden of controlling the movement and checking the weight? What, if any, administrative, regulatory or legislative solutions are appropriate, and how can we effectively deal with these problems without unfairly burdening a segment or segments of the intermodal container movement?

Recognizing the inherent competitive aspects of containerized movement and its relationship among ports, States, regions, countries, modes of transportation and industries, we must look closely and carefully at the impact of any proposals.

These two days of hearings will involve many segments of our national and international economy. The use of intermodal containers has revolutionized the way cargo is handled in this country and all over the world, but we must not overlook the problem of overweight containers.

Our witnesses reflect this diversity of interests. They include: Legislators, Federal agencies, States' organizations representing motor carriers, shippers, shipping lines, terminal operators and consultants specializing in the movement of containerized cargo. We look forward to hearing their testimony on this very important matter.

Mr. ANDERSON. I now turn to the Ranking Member of this subcommittee, the Honorable Bob McEwen of Ohio.

Mr. MCEWEN. Thank you, Mr. Chairman.

I join you in welcoming the witnesses who will be aiding the subcommittee with their knowledgeable testimony over the next two days as we look at an issue of great complexity and economic importance.

I would venture to say, Mr. Chairman, that until the subcommittee began this inquiry some eight months ago, few, if any of us, had given much thought to overweight shipping containers or even knew that such things existed or what significance they might have for the Public Works and Transportation Committee. At the conclusion of these hearings I am certain that we will have gained a far greater appreciation for the issue and its many facets.

The subject we're dealing with—intermodal shipping containers—has revolutionized the transport of goods in the last thirty years. In the ocean shipping business, the old break-bulk freighters of yesterday have been succeeded by large, efficient container ships which, in the way they stow their cargo below and above decks, bear little resemblance to their predecessors. The shoreside facilities that support the ocean shipping services have likewise changed significantly. The concept of intermodalism, where a shipment of goods may travel from point to point by ship, rail and truck without laborious and time consuming packing, unpacking and repacking, has all come about because someone once had the idea that shipping in standard sized metal boxes that could accommodate a wide variety of cargoes would better meet the needs of shippers and their customers.

But those same metal boxes, as the subcommittee will learn, can be overloaded—inadvertently or intentionally—as shippers try to utilize every available cubic inch to maximum benefit. And, it must be stressed, there is nothing wrong with the practice of stuffing containers as full as can possibly be, so long as they remain within legal weight limits.

International standards exist regarding the maximum weights that can be safely packed within shipping containers. For all but a few cargoes, the container is generally full before that weight limit is reached.

While those limits are essential for the safety of the persons handling the containers and for the operation of the equipment handling them, they often far exceed the capacity of truckers in the United States to safely and legally haul them over our roadways. Notice that I confined that observation to the United States, for in many foreign countries—many of them our major trading partners—heavier load limits are permitted. And therein lies one of the stumbling blocks in trying to resolve the overweight container issue. Containerization is truly an international trading issue.

There are other potential pitfalls as well, and for the next two days we have the opportunity to absorb a great deal of information on the subject. Our principal concern, of course, is the impact that the truck movements of containers at weights in excess of State and Federal gross and axle weight limits might have on our highway maintenance needs, and on truck safety.

There is an obvious need to see that the Nation's roads aren't being battered and beaten by illegal overweight traffic. Pavement deterioration costs hundreds of millions, if not billions, of dollars annually in maintenance expenses, and we have every reason to want to hold those costs to a minimum. At the same time, we want to satisfy ourselves and the traveling public that the truck rolling along next to them is safe and properly equipped to handle the load it is hauling.

It may be true that we don't know enough about the nature and extent of the issue to properly frame solutions at this time. Our witnesses' testimony will certainly aid in that regard. The better we understand the interrelationships among the intermodal transportation interests, the shippers and customers they serve, and the economic stakes involved, the better we will be equipped to deal with this subject.

Mr. Chairman, I look forward to learning a great deal during our two days of hearings. I am pleased to be here with you, and feel confident that our time will be well spent.

Thank you, Mr. Chairman.

I also would like to enter into the record at this point the statement of the Honorable John Paul Hammerschmidt, Ranking Member of the Full Committee on Public Works and Transportation.

Mr. **Anderson**. Without objection, so ordered.

[Mr. Hammerschmidt's statement follows:]

# *OPENING STATEMENT OF THE HONORABLE JOHN PAUL HAMMERSCHMIDT*
*SUBCOMMITTEE ON INVESTIGATIONS*
*AND OVERSIGHT*
*HEARING ON OVERWEIGHT CONTAINERS*
*10:00 A.M., JUNE 27 & 28, 1990, ROOM 2154*
*RAYBURN HOUSE OFFICE BUILDING*

*THANK YOU, MR. CHAIRMAN.*

*I AM PLEASED TO JOIN WITH YOU AND THE SUBCOMMITTEE'S RANKING REPUBLICAN MEMBER, BOB MCEWEN, AS THE SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT BEGINS TWO DAYS OF HEARINGS ON THE SUBJECT OF OVERWEIGHT SHIPPING CONTAINERS AND THEIR EFFECT ON HIGHWAY MAINTENANCE REQUIREMENTS AND THE SAFE OPERATION OF THE TRUCKS THAT HAUL THEM.*

*MR. CHAIRMAN, THE SUBCOMMITTEE'S INQUIRY PROMISES TO DELVE INTO A SUBJECT WHICH, I WOULD HAZARD A GUESS, IS NEW TO MANY OF OUR MEMBERS. OUTSIDE OF THE SHIPPING INDUSTRY ITSELF, AND THOSE MOST CLOSELY ALIGNED WITH IT, (SHIPPERS, PORTS, TERMINAL OPERATORS AND OTHERS), "OVERWEIGHT CONTAINERS" IS A DESCRIPTIVE TERM THAT MAY NOT MEAN MUCH, OR COULD MEAN A VARIETY OF THINGS NOT AT ALL RELATED TO THE SUBJECT WE WILL BE ADDRESSING.*

*ACCORDING TO SOME ESTIMATES, THE MOVEMENT OF HEAVYWEIGHT SHIPPING CONTAINERS OVER THE NATION'S HIGHWAYS MAY IMPOSE A TREMENDOUS COST IN TERMS OF PAVEMENT WEAR AND TEAR. THOSE SAME MOVEMENTS MAY POSE A SIGNIFICANT RISK OF ACCIDENTS BECAUSE OF OVERBURDENED TRUCK PULLING AND BRAKING CAPACITY, OVERLOADED TIRES AND THE CHANGES IN HANDLING CHARACTERISTICS THAT RESULT FROM OVERWEIGHT CONDITIONS.*

*ONE OF THE DIFFICULTIES INHERENT IN EXAMINING THIS ISSUE IS, I UNDERSTAND, A LACK OF SPECIFIC DATA THAT COULD TELL US THE EXTENT OF THE PROBLEM. THE FEDERAL HIGHWAY ADMINISTRATION HAS CONDUCTED A STUDY WHICH INDICATES THAT APPROXIMATELY ONE-THIRD OF THE SHIPPING CONTAINERS THAT MOVE THROUGH AMERICAN PORTS MAY BE LOADED AT WEIGHTS THAT WOULD MAKE LEGAL MOVEMENTS OVER U.S. HIGHWAYS EXTREMELY DOUBTFUL.*

*THAT STUDY, HOWEVER, WHILE BRINGING THE ISSUE TO OUR ATTENTION, IS SOMEWHAT LIMITED IN THAT IT IDENTIFIES ONLY THE POTENTIAL FOR THOSE OVERWEIGHT MOVEMENTS. AS THE TESTIMONY FROM THESE HEARINGS WILL DEMONSTRATE, THERE ARE MANY WAYS IN WHICH HEAVYWEIGHT CONTAINERS CAN, AND DO, MOVE SAFELY AND LEGALLY, A FACT THAT MUST BE KEPT IN MIND AS SOLUTIONS TO THE PROBLEM ARE PROPOSED.*

*MR. CHAIRMAN, I LOOK FORWARD TO THESE HEARINGS AS THE SUBCOMMITTEE ATTEMPTS TO BETTER DEFINE THE NATURE AND EXTENT OF THE OVERWEIGHT CONTAINER ISSUE, AIDED BY THE EXPERT TESTIMONY OF THE WITNESSES WHO WILL BE APPEARING. I CONGRATULATE YOU AND MR. MCEWEN FOR SCHEDULING THIS IMPORTANT MATTER, AND ANTICIPATE A PRODUCTIVE TWO DAYS.*

*THANK YOU, MR. CHAIRMAN.*

Mr. ANDERSON. All right. I should mention that tomorrow, our second day of hearings will follow the full committee mark-up; we can't tell you exactly when it will be through, but when it is through, which could be 11, 11:30, the second day of hearings will follow.

Our first witness today is Mr. Joseph Canny, the Deputy Assistant Secretary for Policy and International Affairs for the United States Department of Transportation. Mr. Canny is accompanied by Mr. Richard Landis, Associate Administrator for Motor Carriers of the Federal Highway Administration; Mr. John Carnes, Chief of Division, Ports and Intermodal Operations, Maritime Administration; and Mr. Joseph H. Angelo, Assistant Chief, Merchant Vessel Inspection and Documentation Division of the United States Coast Guard.

Would you rise and raise your right hand?

[Witnesses sworn.]

Mr. ANDERSON. Thank you very much. You may be seated.

Mr. Canny, you may begin.

## TESTIMONY OF JOSEPH CANNY, DEPUTY ASSISTANT SECRETARY, POLICY AND INTERNATIONAL AFFAIRS, U.S. DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY RICHARD LANDIS, ASSOCIATE ADMINISTRATOR FOR MOTOR CARRIERS, FEDERAL HIGHWAY ADMINISTRATION; JOHN CARNES, CHIEF OF DIVISION, PORTS AND INTERMODAL OPERATIONS, MARITIME ADMINISTRATION; AND JOSEPH H. ANGELO, ASSISTANT CHIEF, MERCHANT VESSEL INSPECTION AND DOCUMENTATION DIVISION, U.S. COAST GUARD

Mr. CANNY. Thank you, Mr. Chairman.

We appreciate the opportunity to appear before the committee to discuss the issue of overweight container-carrying trucks on the highways.

Before I go any further, I would like to introduce the panel that is with me here today. They are here to assist me in addressing any questions you may have. To my left are Richard Landis, Associate Administrator for Motor Carriers, Federal Highway Administration; and Joseph H. Angelo, Deputy Chief, Merchant Vessel Inspection and Documentation Division, Coast Guard. To my right is John Carnes, Chief of the Division of Ports and Intermodal Operations, Maritime Administration.

The problem of overweight vehicles carrying containers began to receive widespread recognition in 1988 due to trucker complaints about citations. In particular, motor carriers complained about a growing number of overweight vehicle citations issued to drivers of trucks transporting marine containers.

In May 1988, the National Motor Carrier Advisory Committee reviewed the issue and requested that the Federal Highway Administration consider this problem and, if possible, determine the extent to which international maritime containers were being tendered to motor carriers so as to render conventional highway transport vehicles overweight.

The Department of Transportation has subsequently been examining various aspects of this issue, both in the context of an ongoing analysis of all overweight vehicles and as a unique subset.

The Federal-Aid Highway Act of 1956 placed limits on the weight of vehicles operating on the interstate system in order to protect this vital network.

Federal weight laws are applicable only to the interstate highway system, with State law governing weight limits on all other roads. Some States allow significantly heavier trucks off the interstate, but a few continue to impose lower limits. States often have different weight limits, as well as different approaches to vehicle weight enforcement. Enforcement of both Federal and State limits is assigned to the States.

Vehicle weight limits are not truly uniform even on the interstate system. The grandfather clauses in section 127 of title 23 allow trucks to exceed Federal limits in a given State, provided those vehicles were lawful under State laws or regulations in effect in 1956 or, in the case of axle spacing tables, 1975.

Twenty-three States and the District of Columbia have at least one axle-weight limit that is higher than the Federal weight limits for single and tandem axles, and 30 States allow trucks to operate on interstate highways with gross vehicle weights exceeding the Federal maximum weight limit of 80,000 pounds.

This diversity creates real or perceived competitive differences among States and ports and also presents a major problem to shippers who must transport cargo across international or interstate borders at weights that do not exceed the lowest limit.

Regulations governing the issuance of special permits for overweight trucks on the interstate are also grandfathered. A growing number of States now interpret these rights broadly and routinely issue permits for gross weights above 80,000 pounds. States with more restrictive permit policies are under pressure to change.

Competition among the States and ports for maritime traffic and other business opportunities is making the lack of uniformity in State and Federal weight laws more critical.

The highway damage associated with the operation of overweight container-carrying vehicles is but one part of the much greater damage believed to be generated by overweight vehicles in general. Unfortunately, we have no quantitative information on the damage caused by overweight vehicles. This information gap makes it difficult or impossible to precisely estimate the highway damage caused by the subset represented by overweight container-carrying trucks.

We would note, however, that FHWA, in past estimates of highway costs and wear situations, has noted that a vehicle weighing 90,000 pounds imposes approximately a two-thirds greater pavement wear penalty on the road than an 80,000-pound vehicle. So the costs do go up considerably with the weight of the vehicle.

Before I go any further, I would like to describe the formula by which allowable gross weight limits on the interstates are calculated. This formula supplements the Federal gross vehicle weight limit of 80,000 pounds. Since 1975, maximum gross vehicle weights have been calculated by a Federal formula, called Bridge Formula B, based on the number of axles on a vehicle and the distance between the extreme axles.

In general, the maximum weight permitted on a single axle is 20,000 pounds, and on a set of two tandem axles, 34,000 pounds. However, the control of axle spacings, as well as the weight, is also important so that the total load can be properly spread.

Problems of bridge degradation occur when gross vehicle weights increase or a greater number of repetitive loadings occur than were anticipated in the bridge design process. Highway pavements also deteriorate through repetitious loadings, but the causal factors are axle loads, not gross vehicle weights.

As is the case for the general category of overweight vehicles, there are also safety problems associated with excessively heavy container-carrying vehicles operating over highways. Extremely heavy loads can decrease a truck's braking capacity and increase the stress on the truck's mechanical components. Very heavy containers may overstress tires as well as brakes.

Because of the high interest in the particular problem of container-carrying trucks, several analyses have been conducted.

A demonstration was conducted in March 1988 in Newark, New Jersey, to investigate the feasibility of distributing axle loads of container-carrying vehicles to comply with highway weight limits.

The Bi-state Harbor carriers "weigh-in" showed that compliance with interstate highway weight limits would be difficult if a load exceeding 38,000 pounds of cargo in a 20-foot container were transported on a standard design 27-foot chassis or a load exceeding 44,000 pounds of cargo in a 40-foot container were transported on a 40-foot chassis.

In June 1989, a second weigh-in was conducted in Newark, New Jersey, using innovative container chassis with lift axles, additional axles, and/or extendable chassis. This demonstration showed that in cases where containerized cargo slightly exceeded the weight thresholds established by the earlier weigh-in, innovative container chassis could redistribute the loads to comply with Federal weight limits.

In an effort to determine what the extent of the problem with marine containers might be, the Federal Highway Administration undertook an analysis of containers in our export and import trades. Using the Journal of Commerce data base known as the Port Import/Export Reporting Service, PIERS FHWA, with the assistance of the Maritime Administration, analyzed a sample of container movements focusing on the commodities and cargo weights carried in 20-foot and 40-foot containers, which are used in over 90 percent of containerized freight movements. The results were published in a 1989 paper titled, "Analysis of Port Import/Export Reporting Service (PIERS) Data to Reveal Potentially Oversight Container Movements on America's Highways." If you wish, we will supply a copy of this study for the record.

Based on the weight thresholds determined by the first demonstration weigh-in, the FHWA analysis revealed that approximately 33 percent of all 20-foot and 40-foot containers moving through U.S. ports carried cargo loads that would likely cause the vehicles carrying these containers to violate Federal highway weight limits if carried by truck.

It is important to note the problem is more pronounced for export containers than for import containers: The sample gives an indication that 41 percent of export and 17 percent of import 40-foot containers were potentially overweight. The FHWA analysis also found that these potentially overweight containers frequently carried high-density commodities.

Much has been written about the causes of this apparently intensifying problem. I will try to provide you with a summary of our understanding of the factors that contribute to it.

The international nature of many intermodal container movements plays a major role. The standard 20-foot and 40-foot containers were developed through an international consensus process to ensure interchangeability, and the maximum weights the sum of the container's weight and that of the cargo it carries, is based on the structural integrity of the container, not the transportation use to which it is put. The so-called gross certified weight of the container is set by engineering tests and is marked on a plate permanently attached to the container.

The container weight limits are designed to ensure that the container will not be overloaded. However, because these containers are so well-built, a marine container that is legally and safely loaded for water-borne or rail transportation can be illegal or unsafe for U.S. highway use, depending on the weight, distribution, and truck type and State.

This same container may not be overweight if loaded on a ship or a rail car. For example, typical 20-foot marine containers can safely and efficiently carry 7,800 pounds more than the interstate weight limits indicated in the first demonstration test, and a 40-foot container can carry 31,200 pounds more. At these higher weights, these containers are not illegal if carried by a mode other than highway.

A second factor is that the shipper companies and freight forwarders load containers, but may not be responsible for transporting the containers. Shippers are inclined to load a container until it is full, since most shipping rates are levied on a "per box" basis rather than on a container's loaded weight.

Sometimes shippers illegally overload a container, in which case it is overweight whether it is carried on a U.S. highway or not. Sometimes shippers are simply unaware of the transportation chain for that container and do not know that a legally loaded container will become illegal when carried on a truck in a State with lower vehicle weight limits. The multiplicity of State weight laws contributes to this confusion, particularly for shippers abroad. Weight limits vary from port to port and from State to State.

Complicating the situation are the varying configurations of container-carrying truck chassis. As indicated by the second weigh-in, a change in chassis or axle configuration can sometimes turn an overweight container-truck unit into a legal unit.

The FHWA PIERS study found that 45 percent of the potentially overweight containers exceeded the standards by 2,000 pounds or less.

You have requested that we discuss the two petitions filed with the Federal Maritime Commission concerning possible remedies to a segment of the overweight vehicle problem.

The first petition, P3–89, proposed maximum container weights, and the second, P4–89, proposed elimination of "per container" rates. These petitions were denied by the FMC in an order dated June 5, 1990, on the grounds that the petitioners had not provided a supportable or appropriate basis for action, and that granting the petitions would interfere with a congressionally-created compact between the Federal Government and the States.

In principle, the Department of Transportation agrees that whoever overloads containers should be responsible for subsequent violations of law resulting from overloading. The Department realizes that there are practical obstacles to applying this principle, particularly in the case of import containers. We believe that the denial of the petitions will turn the search for solutions to other approaches that we would like to explore with the committee and with the affected industry sectors.

Although these petitions had some merit from the highway point of view, when put in a broader context, they raised many questions.

The Department supports actions to reduce the incidence of overweight container-carrying highway vehicles that would be consistent with the following goals: Ensure safety and protect the physical integrity of the highway system; encourage technological development; and avoid barriers to increased world trade and to efficiency and productivity.

One action has already been taken in the maritime area that may eventually contribute toward a solution in the highway area. Recent initiatives in the International Maritime Organization, IMO, will, after entry into force, result in the actual weight of containers appearing on shipping documents.

The Coast Guard represents the Department before the IMO, which is the major international maritime safety organization. The Coast Guard has responsibility for implementing and enforcing various international conventions of which the United States is a party.

Under the Convention for Safe Containers, all containers used in international transport are required to have a safety approval plate affixed to the container. The maximum gross weight of the loaded container is on this plate. Under this convention there is no upper limit on what this maximum gross weight can be, provided the container is designed, constructed and maintained to the standards of the CSC. Simply put, the stronger the container is designed and built, the higher the allowable maximum gross weight.

The problem of containers being loaded to more than the maximum gross weight of the safety plate has been discussed at IMO for the past few years. IMO's Maritime Safety Committee, responding to a U.S. Coast Guard Initiative, approved two amendments to the Safety of Liftboat Sea (SOLAS) Convention which is the major convention dealing with operational safety. The first amendment would prohibit containers from being loaded to more than maximum gross weight indicated on the safety approval plate.

The second amendment requires the shipper to ensure that, before loading a container on board a ship, the gross weight of the container is in accordance with the gross weight declared on the shipping documents.

This requirement places the burden on the shipper to ensure that the shipping documents accurately reflect the gross weight of the container, so that those handling the container in the terminal and on the ship know what they are dealing with. If a violation is discovered, the container can legally be set aside until the violation is corrected. We anticipate these amendments could enter into force as early as November 1992.

We believe that these two new requirements are a necessary first step toward resolving the problems of overweight containers. If that information is also in the hands of the trucker, the trucker can determine what equipment is needed to legally carry that load. It is our understanding that this is often not the case, and we believe the commercial reasons why this documentation gap exists should be explored further.

The Department also believes that improved State weight enforcement is a key element of any solution. FHWA continues to provide strong encouragement to the States to use Federal-aid highway planning and construction funds to purchase and install weighing equipment.

FHWA is also seeking to revise its State weight enforcement regulations to require that State enforcement plans be based on truck weight survey data and enforcement records. The truck survey data will indicate where and when overweight trucks are operating, and enforcement records could conceivably indicate the carriers operating them and the shippers that are causing them.

Because of the confusion and increased highway maintenance cost resulting from the multiplicity of State weight limits and permit systems, the committee may also wish to reexamine the grandfather provisions in Title XXIII.

Finally, the Department believes that shipper bonding is an option that should be explored. Bonding has been suggested as a workable solution to the overweight container dilemma by several parties. It would attack the problem at its heart, which is at loading, and would address the seemingly out of reach overseas shipper.

It would have the effect of self-regulation since private sector underwriters could either eventually refuse to bond chronic offenders or substantially raise their rates.

There is nothing to prevent a carrier or shipper from adopting that system by contract now. Indeed, there are many aspects of this problem that do suggest commercial solutions.

Mr. Chairman, that completes my prepared remarks. My colleagues and I would be happy to respond to any questions you might ask.

[Mr. Canny's prepared testimony appears on p. 98.]

Mr. ANDERSON. There are no further opening statements, then.

My first question then would be, to what extent is the total problem of all overweight vehicles and machinery on the highways created by port-related overweight containers, and if we cannot adequately assess it at this point, what steps, if any, are you taking to define the scope of the problem, and is a follow-up planned for the original PIERS study?

Mr. CANNY. Let me try to take those questions in order.

Mr. ANDERSON. First is, to what extent is the total problem of all overweight vehicles——

Mr. **Canny**. We do not have detailed or reliable estimates of the extent of the problem. We do know container-carrying chassis, that is the special chassis designed to move these containers, account for only about eight percent of the total truck-trailer population in the United States.

So, if there is any indication that the relationship of that percentage to the total movements is valid, it would suggest that the container movements are a relatively small percentage of total movements and quite likely a relatively small percentage of overweight movements.

With respect to steps to further define the scope of the problem or follow-up on the PIERS study, we do not have any additional research planned at this point.

We don't believe, based on the information in the PIERS study, that further refinement of that data would appreciably help us in pushing forward policy solutions that might address the issue.

Mr. **Anderson**. If we cannot adequately assess the problem at this point, what steps, if any, are you taking to define the scope of the problem, and if there is a problem and you can't do that, is a follow-up planned for the original PIERS study?

Mr. **Canny**. As I suggested, we think that the problem is a relatively limited one in the overall context of overweight vehicles, and we simply don't have a follow-up plan to collect any further data.

We don't think that further data collection will help us in formulating policy solutions. We think, rather, exploration with the committee and with the affected industry sectors on the extent of the problem as it is currently understood, and on possible solutions is the way that we can proceed.

Mr. **Anderson**. From the part I asked what steps, if any, are you taking to define the scope of the problem, you really can't do that, either?

Mr. **Canny**. The answer is nothing. We don't have anything currently.

Mr. **Anderson**. There isn't a follow-up plan at this time for the original PIERS?

Mr. **Canny**. That is correct.

Mr. **Anderson**. My second question is, there are 23 States and Washington, DC, that have at least one axle limit higher than the Federal limits, and 30 States that allow trucks to operate interstates with a gross vehicle weight limit higher than the Federal limit.

Can Federal standards on highway weight limits and on equipment retain any effectiveness as long as States and local jurisdictions are permitted to allow deviations and exemptions from those standards?

Mr. **Canny**. The problem of the deviations from the standards, both in terms of the grandfather clauses and permitting systems for divisible loads, do permit apparently an increasing number of vehicles over the Federal standards to be operating on the roads.

The number of special permits issued by the States to permit divisible loads over 80,000 pounds to operate has grown very substantially in recent years. As I noted in my testimony, the very heavy vehicles do impose a disproportionate share of wear on the highway pavement.

So, this is an area of concern to us. On the other hand, we think it is not something we should be overreacting to. To the extent that the pavement designs or the safety conditions in the permits or the safety programs in the individual States assure that the overweight vehicles are basically in conformity with safety standards, the mere fact that they are over the Federal weight limits does not create a serious problem in and of itself.

Mr. ANDERSON. What effect would there be on overweight container movements if these exemptions were modified?

Mr. CANNY. It would ease the problem, somewhat, of dealing with the overweight container movements. Part of the problem with overweight containers is that they may be legal in one State and not legal in another. As your question indicates, there are variations from State to State.

Virtually all of the East Coast States have one of the axle weight limits or gross weight limits that exceed the Federal standards. So it may be that a container which arrives at an East Coast port and moves within the State where the port is located, is completely legal on the roads in that State. It is when it moves to an adjoining State it becomes illegal.

So, greater uniformity in the weight limits would help us to deal with the problem and help the trucking industry to deal with the problem to some degree.

Mr. ANDERSON. This is a follow-up, I believe, to one of my former questions. The FHWA's April 15, 1988 reply to the National Association of Stevedores, and proposals to include overweight containers in the section 158 study included in the 1987 Reauthorization Act, indicated it may have merit and that the Maritime Administration had contacted the Transportation Research Board about a separate study.

What action has the Maritime Administration taken since then? Mr. Carnes.

Mr. CARNES. Mr. Chairman, the Maritime Administration has had some informal discussions with TRB. However, all of our actions to date have been focused on current activities, such as the FMC petitions, the overweight things, and some of the ad hoc activities that are going on in the Department.

Your answer, sir, is we have not formally concluded any type of research with TRB.

Mr. ANDERSON. You mention in your testimony that the States' willingness to accept concurrent Federal interstate weight limits is declining. Could you explain that a little more fully? In other words, what do you base it on; what reasons are there for it; can this problem be resolved, and what is the timetable for FHWA for revising?

Mr. CANNY. Mr. Landis is dealing with that problem.

Mr. LANDIS. Mr. Chairman, we base that statement on the actions we are seeing occurring in the States. We were responding to grandfather provisions that were included in the original acts that set weight limits on the highways.

We have been challenged in court several times, one in particular in South Dakota, and we are precluded from dictating, if you will, States' adoption of grandfather clauses, and basically have been told that we must accept, and we in fact do accept, the States' declaration of their grandfather provisions and their grandfather rights under these weight limits.

What is happening is that a variety of pressures, particularly economic I think, are coming into play with the States. They are looking at those grandfather clauses with a different view and interpreting them in a less restrictive fashion than they have in the past.

So, over a period of time, you have seen these relaxations of the weight limits.

Mr. ANDERSON. In your testimony, you refer to the Maritime Administration's statutory mandate to examine the economical and technological aspects of containers. Now, what activities does the Maritime Administration currently have underway?

Mr. Carnes.

Mr. CARNES. Mr. Chairman, currently, the Maritime Administration has two major activities underway. We have the Cargo Handling Cooperative Program, which addresses the technological aspect of containers. The CHCP is a cooperative program between MARAD and several U.S. Flag Steamship Companies and the American Association of Port Authorities as an associate member.

This program has developed automatic equipment identification, which is used at a number of ports, including the ports of Seattle, Tacoma, and Anchorage. Automatic equipment identification is an automatic system which identifies the container equipment.

Economical aspects of containers will be addressed in a study which is entitled "Double Stack Container System, Implications for U.S. Railroads and Ports." This study describes the double stack system, determines the potential for domestic container transportation and identifies the implication for railroads, ports and ocean carriers.

We expect it will be published late this summer or early in the fall, sir.

Mr. ANDERSON. Now, in testimony, the International Maritime Organization, the IMO, is referred to as considering a proposal that would require the actual weight of the container to appear on the shipping documents.

Now, what is the current practice? If the IMO adopts this proposal, how does the IMO enforce such a provision? Can this approval process be put on a fast track in order to achieve changes more rapidly?

So, what is the current practice? I am going back to my first question.

Mr. CANNY. Mr. Angelo does much of the liaison.

Mr. ANDERSON. Mr. Angelo.

Mr. ANGELO. Thank you, Mr. Chairman.

From the maritime standpoint, the major emphasis for knowing the weight of the container is for the stability of the ship. The current practice is handled a number of different ways. It could be in the shipping documents. Right now, it could also be handled through automatic data processing. If neither of those are there, there are other ways the container could actually be weighed.

Mr. ANDERSON. If the IMO adopts the proposal that would require the actual weight of the container, how does the IMO enforce such a provision?

**Mr. Angelo.** Such a provision would be contained in the International Convention for the Safety of Life at Sea, the SOLAS Convention. The SOLAS Convention is enforced by the member countries. Right now, there are approximately 107 countries, parties to this convention.

When this amendment enters into force, the enforcement mechanism used would be detention. That is, if the container is found not to be in accordance with this requirement, it would simply be detained until it was corrected.

**Mr. Anderson.** To follow-up on my last question, how does the IMO enforce the provision; can this approval process be put on a fast track in order to see changes more rapidly?

**Mr. Angelo.** I would say, Mr. Chairman, from this, we have put this on a fast track, but fast is relative. In IMO, the amendment was adopted by the subcommittee that met in January. It was forwarded to the Maritime Safety Committee, which approved this amendment last month, in May.

Now that this has occurred, it must enter into the formal amendment procedure of the convention. That would require the amendments to be adopted by the Maritime Safety Committee at its next meeting, which is May of 1991.

Once that occurs under the provisions of the convention, a minimum of 18 months must pass before it can actually enter into force. So I would say it is on the fast track. The fastest it can occur is to enter into force in November of 1992.

Within IMO, that is fast, but as I said, fast is relative.

**Mr. Anderson.** You mention in your testimony that there is nothing to prevent a carrier and shipper from contracting for a bonding requirement to cover overweight fines. How wide is this practice now, and what means are available to implement such a requirement, and what would be the appropriate agency to handle such a proposal?

My first question, how widespread is this practice now?

**Mr. Canny.** Mr. Carnes can respond to those questions, Mr. Chairman.

**Mr. Anderson.** Mr. Carnes.

**Mr. Carnes.** The practice for bonding for overweight fines is virtually nonexistent. But underwriters do provide performance bonds in a number of industries, and presumably would be prepared to implement a bonding system.

**Mr. Anderson.** Virtually nonexistent, then it kind of eliminates the need of my follow-up question, what means are available to implement such a requirement, and what would be the appropriate agency to handle this proposal?

**Mr. Canny.** Our sense, Mr. Chairman, is that it is something that is best worked out by the industry on a——

**Mr. Anderson.** Industry itself?

**Mr. Canny.** On a private basis, without governmental intervention. We are not fully convinced that that will be feasible, but we think it is an approach that is worth exploring. Perhaps industry conferences, or a government-industry conference, could be called to explore that, or we can work with various sectors of the industry to ascertain whether that would be an effective solution, and if so, what are the costs and how quickly it could be implemented and so on.

Mr. ANDERSON. Is there a unified Department of Transportation position on the overweight container issue?

Mr. CANNY. Can't you tell that from our testimony?

Mr. ANDERSON. Are the different administrations in agreement on how best to approach the problem? I have got, I think, three or four of you right now—the Maritime Administration, Federal Highway Administration, United States Coast Guard and Department of Transportation.

You are a little different.

Mr. CANNY. We didn't bring the St. Lawrence Seaway along, but we could have.

Mr. ANDERSON. Is there a unified position in the Department of Transportation?

Mr. CANNY. Yes. I think we recognize it is a problem that has a variety of facets to it, but it is primarily a problem for the highway mode.

With the activities in the International Maritime Organization and the current practice, overweight containers generally do not represent a problem for the maritime sector. For railroads, it is not much of a concern. So, it boils down to being a problem that primarily affects the highway movement. And I think there is consensus on that.

I think there also is a consensus that we need to be very concerned about the safety aspects, in particular, and also the impacts on our infrastructure. Another area of consensus, is whatever we do is something that has to take into account the broad economic impacts. Something like trying to impose a flat lower weight limit that would make movement by rail less economical, or something that would, for example, require installation of scales at all ports, and use of the scales for each movement would impose operating costs and other restrictions that might very well exceed the benefits expected.

So, yes, the answer in short is there is a consensus. It is a difficult problem to get a handle on.

Mr. ANDERSON. In other words, the administrations are pretty well in agreement?

Mr. CANNY. Yes.

Mr. ANDERSON. What portion of the 33 potentially overweight containers in the PIERS study would you estimate are inadvertently versus intentionally overloaded? In other words, what is the plan?

Mr. CANNY. We have no way of estimating that, sir. It was an analysis of data that provided, and we did not interview shippers or go out and open containers or anything of that sort. We simply can't make a guess on that.

Mr. ANDERSON. You didn't have a percentage, did you?

Mr. CANNY. No, sir.

Mr. ANDERSON. Is 40 percent high?

Mr. CANNY. I would not want to speculate.

Mr. ANDERSON. California has chosen to define a container as a divisible load and not issue special permits to transport overweight containers. How many other States have chosen this same approach?

Mr. Landis. Mr. Chairman, to our knowledge, the only State we know of that has taken the divisible load tack is California. We are not familiar with any others at this point.

Mr. Anderson. Are any studies available that evaluate the braking and handling impacts of overweight containers on motor carriers?

Mr. Landis. Not that I have seen specifically that we have had. The problems that arise and the reason most jurisdictions have defined the ocean-going portion of containers as non-divisible is because of the problems that are encountered with Customs and others in gaining access in splitting up those kinds of loads.

It opens a whole new series of issues in how you get at them and divide loads. And I have not talked to California about their experience on this, but that is what we understand from the other jurisdictions.

Mr. Canny. Mr. Chairman, perhaps—there are two interpretations of the question. You mentioned the word "braking." Braking might be used in terms of applying the brakes and controlling the vehicle or breaking up, or subdividing the load. I think Mr. Landis responded on the second part.

You may be very interested in the first, as well. Is that your concern? Can we go into that?

Mr. Anderson. Stopping distance.

Mr. Canny. Again, Mr. Landis is the person to talk about the safety studies.

Mr. Landis. Given the new tack, can I ask you to reask the question, Mr. Chairman? I had my mind set on——

Mr. Anderson. Are any studies available that evaluate the braking and the handling impacts of overweight containers and motor carriers? I asked you to evaluating the braking.

Mr. Landis. The answer to the question is we have not done studies specifically on container-type trailers and container-type operations. Our braking studies and those done by the National Highway Traffic Safety Administration concern trucks and buses in general.

In looking at this, a question that is unanswered, one that I had for my curiosity, I would like to see what issue there may be from a maintenance point of view. Rolling stock used in container operations often sits for longer periods of time and potentially has maintenance difficulties.

But the standards that go into the systems are essentially the same for these types of vehicles as for standard vehicles, and those are the ones we have studied.

Mr. Anderson. Foreign commerce seems to be using longer, heavier containers, and these will eventually work their way over to the United States, exacerbating the problem. Do we have any leverage on foreign ports to control overweight containers?

Mr. Carnes. No, sir, I am not aware of any leverage that we have as far as that control, other than the IMO efforts that are presently going on at this time, which, of course, would be international in scope, and as I understand them, the container would not be able to be loaded aboard the ship at any port if the weight was not correct, and if it did exceed the weight limit of the container.

However, that does not completely address the overweight highway problem. A number of those containers could be legal at that particular point and illegal when they get on the highway. But because that data would be required, it would be a step in the right direction.

Mr. CANNY. Mr. Angelo can elaborate on the IMO activities.

Mr. ANGELO. In fact, the purpose of bringing this issue up before the International Maritime Organization was to establish some sort of international standard so that we could make sure that containers coming into our country had at least gone through that standard in the country that was exporting the container.

By putting the standard into the convention, it is a responsibility of the countries that are party to the convention to make sure that prior to loading the container, the gross weight of the unit is accurately reflected in the shipping documents.

This will not totally solve the highway problem in the United States, but it is a step in the right direction to first know the weight of the container when it enters the U.S. Once we know the weight, attempt to deal with it here, sir.

Mr. ANDERSON. Doesn't it also cause a problem in other countries? It seems to me if they are using longer and heavier containers, it would seem they would get there and it would increase our problem. I would think it would be damaging to their highways and cause them problems as much as it does ours.

Mr. CANNY. The practice is different, country to country. In European nations, the load limits are higher than in the United States. They may design their highways with heavier pavement designs, stronger bridge structures.

Mr. ANDERSON. Is that something we should be doing?

Mr. CANNY. I don't think I would want to venture an opinion on that. That is a very complex issue, as you well know. Our standards are developed painstakingly through AASHTO for the most part, and it certainly may be worth looking at over a period of time.

To the extent that we are having an increasing number of heavy trucks, we are concerned within the Department over the stresses that are being imposed on bridges, and an increasing number of bridges both on the Federal-aid system and off the system are now having to be posted with weight limits and are not able to carry their full design load.

So that is a concern that we will have to be exploring within the Department, with the States and with your committee over the period ahead. Another aspect of the question, though, is that in many other nations, the containers don't move over the roads for any particular distance.

They may move by rail or barge to a much greater degree, or they may be loaded or unloaded at the port to a somewhat greater degree than is the case here, or at a terminal close to the terminus of the barge or rail movement.

So that movement of the very heavy container over the roads may be less common in these nations than it is here. I might also mention that the problem is not only one with import containers.

As my testimony pointed out, the U.S. export containers seem to be overloaded from a highway standpoint to a somewhat greater degree than the import containers are, so we are part of the problem as well as being part of the solution.

Mr. ANDERSON. I was told that was because there wasn't a requirement overseas for—if your containers were overweight, so why not make them heavy when you ship them elsewhere. Do you feel that a carefully crafted petition to the FMC could overcome the two petitions shortcomings?

Mr. CANNY. I think I would like to defer to the FMC on that. I understand that FMC will be on the agenda subsequently, and I think they have better judgment of their own authorities and the reasoning by which they arrived at their decisions on these two cases.

Mr. ANDERSON. We have a couple of other meetings going on at the same time, so I would like to announce that if other members do have questions, we will submit them in writing so that hopefully you can help us answer them that way.

Mr. CANNY. We will be pleased to do that, sir, and also to work with you and the staff in any further work that may follow from the hearing.

[Mr. Canny's responses to additional questions follow:]

**U.S. Department of Transportation**
Office of the Secretary of Transportation

400 Seventh St., S.W.
Washington, D.C. 20590

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NOV 19 [illegible]

The Honorable Glenn M. Anderson
Chairman, Subcommittee on
Investigations and Oversight
Committee on Public Works and Transportation
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your expression of appreciation for our testimony on overweight containers. The Department is interested in the successful resolution of this complex problem, and we appreciate the opportunity to respond further on this matter. Our response to your questions follows.

1. Has the Department any plans to conduct another PIERS (Port Import/Export Reporting Service) study?

> Answer: The Department does not plan to repeat the PIERS analysis. The original analysis quantified the approximate number of marine shipping containers that could potentially render conventional highway transport vehicles overweight. The Department feels that a follow-up PIERS study would not further clarify this problem given the unknown number of containers that are legally moved over highways under special permits or by specialized transport vehicles. In addition, some of the potentially overweight containers identified by PIERS analysis, which are judged to be too heavy for highway transport, may have been transported by rail between port terminals and inland points. Further, the potential number of overweight containers is a small part of the overweight truck problem. A GAO report in 1979 found that about 22 percent of loaded tractor-trailers exceeded State weight limits and we have no reason to believe the situation is much different today.

2. What percentage of chassis currently have their maximum allowable gross vehicle weights (GVW) indicated on them? Have you considered GVW to be included with other information required by regulation?

> Answer: We interpret your use of "chassis" to mean the trailer unit associated with a truck-tractor-trailer combination. Prior to 1972, gross vehicle weight (GVW) ratings were not required to be shown on trailer chassis. Trailer chassis used to haul containers have a service life

ranging from 20 to 30 years. Therefore, it is conceivable that some of the pre-1972 chassis may not have the GVW ratings indicated on them. The Department does not have statistics on the number of "unlabelled" chassis operating today, nor do we have any plans to collect the information. Chassis manufacturers have been very cooperative in affixing the GVW ratings to chassis manufactured after 1972. The National Highway Traffic Safety Administration (NHTSA), which is responsible for enforcing the labelling of chassis, feels that the number of "unlabelled" chassis is minimal and does not constitute a significant safety problem.

49 CFR Part 567 (Certification) requires all chassis manufacturers to certify, among other things, the Gross Vehicle Weight Rating (GVWR) and the Gross Axle Weight Rating (GAWR) for each chassis by indicating the information on a label affixed to the chassis. The manufacturer indicates the weight rating compatible with the specifications for the chassis frame, brakes and axles. We currently have no plans to propose additional regulations associated with the labelling of GVWR on chassis.

Safety aspects of chassis operation are enforced by our Office of Motor Carrier Standards, Federal Highway Administration (FHWA). Any commercial motor vehicle with a gross vehicle weight of 10,001 pounds or more used by a motor carrier in interstate commerce is subject to the Federal Motor Carrier Safety Regulations (49 CFR 350-399).

3. What philosophical differences exist between the Administrations in your Department on overweight container policy?

Answer: There are no philosophical differences among the Department's Administrations with regard to our policy on overweight containers. The Department's policy was clearly stated in our testimony presented to the Subcommittee on Investigations and Oversight.

4. Has the Department carried out any further analysis since June 27, 1990, with regard to DOT's suggestion that "shipper bonding" is a means of self-regulation of overweight container movement?

Answer: The Department has not carried out any further analysis of "shipper bonding" associated with the movement of overweight containers following the presentation of its testimony on June 27, 1990. We recognize that there is no government institutional mechanism for overseeing the administration of a "shipper bonding" activity. We are not prepared at this time to recommend that the Federal government assume this function.

5. Can a federal or state agency be empowered to weigh containers and then delegate the power to carry out and enforce that activity?

> Answer: Enforcement of weight requirements, presumably through criminal and/or civil penalty provisions, necessarily involves the discretionary exercise of governmental authority, and so mandates performance by a governmental agency. (See, e.g., OMB Circular A-76 at para. 6(e), copy enclosed). The ministerial act of weighing containers, on the other hand, might be performed by a private party acting under government delegation (e.g., individual service stations perform automobile inspections and emissions tests), but authority to enforce violations must remain with a governmental entity.

I hope these responses are helpful.

Sincerely,

Joseph F. Canny
Deputy Assistant Secretary for Policy
and International Affairs

Enclosure

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

August 4, 1983 CIRCULAR NO. A-76 (REVISED)

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Performance of Commercial Activities

1. Purpose. This Circular establishes Federal policy regarding the performance of commercial activities. The Supplement to the Circular sets forth procedures for determining whether commercial activities should be performed under contract with commercial sources or in-house using Government facilities and personnel.

2. Rescission. OMB Circular No. A-76 (revised), dated March 29, 1979; Transmittal Memoranda 1 through 7; Supplement No. 1 to the Circular, dated March 1979.

3. Authority. The Budget and Accounting Act of 1921 (31 U.S.C. 1 *et seq.*), and The Office of Federal Procurement Policy Act Amendments of 1979 (41 U.S.C. 401 *et seq.*).

4. Background.

a. In the process of governing, the Government should not compete with its citizens. The competitive enterprise system, characterized by individual freedom and initiative, is the primary source of national economic strength. In recognition of this principle, it has been and continues to be the general policy of the Government to rely on commercial sources to supply the products and services the Government needs.

b. This national policy was promulgated through Bureau of the Budget Bulletins issued in 1955, 1957 and 1960. OMB Circular No. A-76 was issued in 1966. The Circular was revised in 1967 and again in 1979.

5. Policy. It is the policy of the United States Government to:

a. Achieve Economy and Enhance Productivity. Competition enhances quality, economy, and productivity. Whenever commercial sector performance of a Government operated commercial activity is permissible, in accordance with this Circular and its Supplement, comparison of the cost of contracting and the cost of in-house performance shall be performed to determine who will do the work.

b. Retain Governmental Functions In-House. Certain functions are inherently Governmental in nature, being so intimately related to the public interest as to mandate performance only by Federal employees. These functions are not in competition with the commercial sector. Therefore, these functions shall be performed by Government employees.

c. Rely on the Commercial Sector. The Federal Government shall rely on commercially available sources to provide commercial products and services. In accordance with the provisions of this Circular, the Government shall not start or carry on any activity to provide a commercial product or service if the product or service can be procured more economically from a commercial source.

6. Definitions. For purposes of this Circular:

a. A commercial activity is one which is operated by a Federal executive agency and which provides a product or service which could be obtained from a commercial source. A commercial activity is not a Governmental function. A representative list of such activities is provided in Attachment A. A commercial activity also may be part of an organization or a type of work that is separable from other functions or activities and is suitable for performance by contract.

b. A conversion to contract is the changeover of an activity from Government performance to performance under contract by a commercial source.

c. A conversion to in-house is the changeover of an activity from performance under contract to Government performance.

d. A commercial source is a business or other non-Federal activity located in the United States, its territories and possessions, the District of Columbia or the Commonwealth of Puerto Rico, which provides a commercial product or service.

e. A Governmental function is a function which is so intimately related to the public interest as to mandate performance by Government employees. These functions include those activities which require either the exercise of discretion in applying Government authority or the use of value judgment in making decisions for the Government. Services or products in support of Governmental functions, such as those listed in Attachment A, are commercial activities and are normally subject to this Circular. Governmental functions normally fall into two categories:

(1) The act of governing; i.e., the discretionary exercise of Government authority. Examples include criminal investigations, prosecutions and other judicial functions; management of Government programs requiring value judgments, as in direction of the national defense; management and direction of the Armed Services; activities performed exclusively by military personnel who are subject to deployment in a combat, combat support or combat service support role; conduct of foreign relations; selection of program priorities; direction of Federal employees; regulation of the use of space, oceans, navigable rivers and other natural resources; direction of intelligence and counter-intelligence operations; and regulation of industry and commerce, including food and drugs.

Mr. ANDERSON. Our next witness, maybe he will answer some of these questions.

[Mr. Canny's prepared statement appears on p. 98.]

Mr. ANDERSON. Our next witness is Mr. James J. Carey, Chairman of the Federal Maritime Commission, accompanied by Mr. Robert Bourgoin, General Counsel.

Please rise and raise your right hand.

[Witnesses sworn.]

Mr. ANDERSON. Be seated, and Mr. Carey, you may begin.

## TESTIMONY OF JAMES J. CAREY, CHAIRMAN, FEDERAL MARITIME COMMISSION, ACCOMPANIED BY ROBERT BOURGOIN, GENERAL COUNSEL, AND DAVID DYE, COUNSEL TO THE CHAIRMAN

Mr. CAREY. Thank you, Mr. Chairman. It is a pleasure to appear before you to address the matter of shipping containers which may contribute to truck weight violations on public highways.

With me are Mr. Robert Bourgoin, General Counsel, and David Dye, my counsel in the Chairman's Office.

The Federal Maritime Commission has been monitoring for some time the efforts by industry and governmental entities to discuss a possible resolution of this issue. The Commission was also, as you have indicated, recently petitioned by certain ocean and motor carrier interests to initiate proceedings to effect rules to regulate the weight of shipping containers. My testimony will address those petitions and the Commission's reasons for denying them, as well as make some general observations from the FMC's maritime perspective.

One petition was filed jointly by the South Europe/U.S.A. Freight Conference, or SEUSA, which is a conference of ocean common carriers, the American Trucking Associations, or ATA, and the ATA Intermodal Council.

The other petition was submitted jointly by another ocean common carrier conference, the Trans-Pacific Westbound Rate Agreement, or TWRA, ATA and the ATA Intermodal Council. For convenience, I will refer to the petitions as the SEUSA and TWRA petitions, although the ATA co-sponsored both of them.

The petitions were based on a study issued in March 1989 by the Federal Highway Administration entitled, "Analysis of Port Import/Export Reporting Service (PIERS) Data to Reveal Potentially Overweight Container Movements on America's Highways."

The FHWA sought to quantify the overweight container problem based on PIERS data, and found that between 17 percent and 40 percent of container movements in the import and export trades were carrying cargo weights that could potentially cause the truck transporting them to be overweight.

The FHWA also identified commodities which were most likely to result in truck weight violations when containerized. It should be noted that the use of "overweight" in this context is not directly related to the rated carrying capacity of the container, which may not be exceeded even though the vehicle carrying the container is overweight under the highway laws.

The SEUSA petition requested the Commission to promulgate a rule which would allow ocean carriers to refuse to accept containers which were in excess of specified weights. The petition suggested certain weight limits, such as 38,000 pounds for a 20-foot container, and 45,000 pounds for a 40-foot container, which it wanted the FMC to impose.

Under the SEUSA proposal, if a carrier refused acceptance of such a container, the expenses associated with the handling of that container, including its reloading to meet the proposed weight limits, would be charged against the shipper.

The TWRA petition took a different approach. It requested the FMC to impose a rule which would focus on certain commodities identified in the FHWA study as being prone to overloading, such as paper, chemicals and beer. The TWRA proposal would prohibit per container rates on these commodities and on any other commodities identified by the FMC in a subsequent stage of the rule making.

Per container rates apply to container-loads of cargo without regard to the weight of the contents of the container. The TWRA proposal is premised on the concept that per container rates encourage overloading of trucks because they provide an incentive for shippers to cram as much cargo into a container as possible.

The Commission published the petitions in the Federal Register and received 77 comments. Generally, shippers who commented were opposed to the proposals, and truckers and carrier interests replied favorably.

As reflected in our order issued on June 5, 1990, we denied the petitions on several grounds. One was that the petitions were flawed or inadequate to the extent they proposed to remedy this alleged problem.

Both petitions dealt only with cargo in shipping containers, and thereby disregarded the contribution of other heavy loads, such as truck trailers and construction equipment, to highway safety problems.

Also, the TWRA proposal appeared to be based on the assumption that ocean carrier per container rates provide the primary incentive for shippers to overload containers. But there may, in fact, be other transportation factors, such as terminal per container rates or other surface transportation considerations which would not be affected by a ban on ocean carrier per container rates.

Thus, the proposals submitted to the FMC were in one sense too narrow to have the desired effect of preventing overloaded trucks on the highways.

In other respects, however, the proposal were overly-broad and far-reaching. Both petitions considered containers "overweight" if they were simply of a certain weight, despite the fact that it is how the containers are transported on certain size or configured chassis and axles which often determines whether a load violates State or Federal highway weight limits.

The proposals urged the FMC to ban certain containers on the basis of their weight, even though the axle configurations or type of chassis equipment used could, in fact, render the transport of those containers both safe and legal.

The proposals were also overbroad inasmuch as they would ban certain loads or rate practices with respect to containers, for the purpose of preserving the highways, when an undefined but potentially considerable percentage of those affected containers may never touch a public highway.

Many of these containers are loaded dockside for export, or are moved to or from ports by barge or rail, and therefore have no impact on highways. Others may move under State exemptions to the Federal Bridge Formula, or on roads not subject to the Bridge Formula, and are therefore transported legally and are not subject to the highway fines which are imposed on truckers.

The SEUSA and TWRA proposals were also simply unworkable in several other respects. The TWRA plan was to focus on commodities which it contended most frequently contribute to overweight loads, including lumber and other forest products, and to ban certain types of rate practices for those commodities as reflected in the carriers' tariffs. But these are among the enumerated commodities specifically exempt under the law from FMC tariff-filing under section 8 of the Shipping Act of 1984, and therefore would not be amenable to a Commission ban on per container rates in carrier tariffs.

We felt the SEUSA petition would create difficulties to the extent the FMC would assume responsibility for establishing de facto highway weight limits and for trying to determine whether to create exceptions to these limits if the container is on special equipment.

The FMC's traditional and, in my opinion, established expertise is not in the area of highway safety or equipment. However, should the Commission have chosen to adopt a rule without acknowledging the appropriateness of exceptions for special equipment, this could have had the effect of discouraging the development of new technologies for improving surface transportation safety and efficiency.

The petitions' inadequacies may have stemmed in part from their reliance on the FHWA study. I would emphasize that this is not a criticism of the study itself; the study is a reasonable preliminary estimate of how shipping containers contribute to potential highway safety and maintenance concerns.

But the study was not intended to determine with any precision the source and extent of container movements which result in highway weight violations, and was certainly not designed or intended to provide standards and criteria for FMC-enforced regulations.

Thus, although some critics of the FHWA study have referred to it as "flawed," I believe it is more accurate to state that the petitions' use of the study as a basis for their proposals to us was not appropriate.

Perhaps most importantly, the granting of either or both of these petitions would have, in my opinion, resulted in the FMC's preemption of Congress' current approach of apportioning rights and responsibilities for highway weight limits among local, State and Federal governmental entities.

As the Commission noted in its decision, the Bridge Formula empowers State and local jurisdictions to issue special permits should they determine that there are countervailing reasons for over-the-road movement of heavy loads which outweigh the established highway safety standards.

Thus, any action by the FMC to establish maximum weights for containerloads would have removed at least some of the flexibility Congress granted to States and local jurisdictions.

This issue also involves various specialized regulatory bodies and agencies within local and State and Federal Government which correspond to the different transportation modes and types of industries that would be affected.

This was apparent to the Commission from its monitoring of some of the inter-industry and inter-governmental discussions on the subject over the past few years. I believe it would be inappropriate—and, more significantly, ineffectual—for an issue of this broad scope and magnitude to be addressed unilaterally by my agency from a narrow perspective.

It is imperative, therefore, that proposed solutions to this issue consider and encompass the effects on the motor and rail and maritime industries, and the roles of the local, State, and Federal governmental bodies with their respective regulatory oversights.

The manufacturers and shippers of the commodities most likely to be affected, such as chemicals and forest products, should also have a part in both determining and contributing to the solution. The problems must not be viewed and cannot be solved by narrowly focusing on only one aspect of the issue.

We are pleased that these hearings are taking place and that there are other signs of Congressional intent. We note, for example, that Congress will soon be receiving a study on the Bridge Formula being prepared by the Transportation Research Board of the National Academy of Sciences, pursuant to the 1987 Federal Aid Highway Amendments.

Because a comprehensive solution is required, we feel Congress is the appropriate forum to resolve this matter. We believe that Congress, rather than any one particular government agency, is in the best position to apportion the rights and responsibilities of State and local and Federal entities and to consider the role of, and impact on, the various transportation modes involved, as well as the industries who would most likely be affected by new laws and regulations and the jobs that they represent.

To this end, the FMC is ready to provide assistance to this subcommittee or any other Congressional body to contribute what it can to help achieve a fair and effective and complete resolution.

Mr. Chairman, that completes my statement, and we would be happy to answer any questions.

Mr. **Anderson**. We do have a problem. We have a vote.

Mr. **Carey**. Yes, sir.

Mr. **Anderson**. I think before I ask you a question, we better go vote and come right back. We will stand in recess and return in twenty minutes.

[Recess.]

Mr. **Anderson**. The meeting of the committee will come to order.

Mr. **McEwen**. Thank you, Mr. Chairman. This is of no passing concern to me, and I think that we have to resolve this in an equitable manner, because we cannot expect the taxpayers nor the law enforcement agencies to commit the resources to police this on a regular basis, when the damage done to our highways is so massive.

So, we have to come to some sort of accommodation, everybody is going to have to give a little bit, and I hope that we can come up with a solution. I feel that the independent operator at the mercy of everything being dumped on his trailer, is not the way to go.

I think we have to do something better, and I hope that as a result of this, we will come to that conclusion. I look forward to hearing the witnesses, Mr. Chairman.

Mr. ANDERSON. Okay. I will start with my questions.

In your testimony, you mention the SEUSA and TWRA petitions as being in one sense too narrow and in another overly-broad. Could a petition be carefully crafted that would allow the FMC to resolve the problem of overweight container movements?

Mr. CAREY. In my opinion, Mr. Chairman, I don't think that it can. And the reason I don't, if you just take one aspect of that, no matter what the petition would say, there is one area in which we don't have jurisdiction and that is the products that are exempt from tariff filing.

Forest products, wood products, waste paper—those are products that are very dense. They are products that one would identify as leading to overweight containers, and we would have no jurisdiction. No matter how carefully the petition is crafted, the Commission could not address those commodities.

Even if that were not true, we are still not the agency that can solve this, because I think the issue is a very complex one and requires a comprehensive solution including rail, truck, ocean carries, and the industries that use those modes of transportation.

Mr. ANDERSON. You have almost answered my next question. What alternatives are there short of congressional action that could resolve the overweight container problem?

Mr. CAREY. When the Department of Transportation representatives were testifying, they mentioned this IMO proposal requiring that the containers be weighed. That might be a partial solution. I don't think it would be the comprehensive solution, though, that I feel is needed. I think that Congress needs to be involved with the different agencies.

One thing, as I was listening to the testimony earlier, that might be of help as an idea is to form an industry advisory committee. On our automated tariff project, we brought in different members of the industry, so that we didn't end up designing a government round peg that wouldn't fit in an industry square hole.

Getting industry involved has to be a part of the solution. I think a major part of this whole thing is that it is driven by economics. The reason that either incoming- or outgoing-cargo is put into these boxes up to the box limit is economics, and at least for outgoing cargo, you could be talking about a significant number of American jobs if indeed the United States limits the amount that can go into the containers, and other countries do not. This could increase the American industry shipping costs--and in turn could determine whether our goods will sell overseas or not.

Mr. ANDERSON. The Department of Transportation testimony mentions that there is nothing to prevent a carrier and shipper from contracting for a bonding requirement to cover overweight fines. What means are available to implement such a requirement, and what would be the appropriate agency to consider such a proposal?

Mr. CAREY. I think, one, such bonding exists at this point, it is minimal. Two, you are talking there about bonding involving millions of shippers and tens of millions of boxes.

That is a horrendous cost. Somebody will have to pay that. I think it will be passed on to the American consumer. That also could add costs which would make American manufacturers noncompetitive. Whoever is going to oversee that type of program would be undertaking an immense project.

I would hope we wouldn't get it.

Mr. ANDERSON. Mr. McEwen.

Mr. MCEWEN. Thank you, Mr. Chairman. I apologize for being in and out. We have a mark-up next door, and for some reason or another, every bill I have an amendment to is over there and I am losing them one vote at a time, and probably if I were there, I would do better.

The Federal Maritime Commission is supposed to give us a solution to this, or some recommendation, right?

Mr. CAREY. No, sir, I don't think so. We had two petitions——

Mr. MCEWEN. So, your testimony is basically describing the problem for us more?

Mr. CAREY. We are describing the problem. We described the two petitions that we looked at, and we said pretty emphatically that those two petitions didn't solve the problem. We are one narrow slice in the whole thing, and we cannot solve the whole problem. We think you need a comprehensive solution involving all the Federal agencies, the industry and the Congress.

No matter what we would do, we would not be able to resolve the whole thing. We have no authority over truckers just hauling truck trailers domestically.

Mr. MCEWEN. I am not an expert on this at all. Can you put a bill of lading on there that tells how much it weighs, on a crate?

Mr. CAREY. Yes, sir, that could be done. It is not done now, and in many cases, if there is a weight, it is an estimated weight. That was addressed when DOT was here. They were talking about the IMO, International Maritime Organization, coming up with a resolution that by having the box weighed, it would be on the bill of lading and the manifest.

That doesn't address the domestic side of the programs, that is movement that does not flow in ocean commerce; in other words, just a truck and a trailer that originates somewhere in America and goes somewhere else in America.

Mr. MCEWEN. We already deal with that pretty much, don't we, or not?

Mr. CAREY. No, sir.

Mr. MCEWEN. You are talking about a package container in St. Louis that is going to Chicago, and where are these containers used other than on and off ships?

Mr. CAREY. I was addressing other than things that go on ships—for example, a truck trailer that is never going to see a ship. Any solution that we would be involved in would have no impact on that at all. So that is a part of the problem the FMC can't solve, no matter what we do.

Mr. McEwen. My focus, perhaps not the focus of the committee, is a trucker comes in and unloads the package, whatever it is—what is it called?

Mr. Carey. Container.

Mr. McEwen. Off the ship, and they drop it on the back of his truck and he carts it off down the road. Now, it doesn't seem overly complicated to me if he could find out how much it weighed, then he would know whether or not he was within the limits.

Mr. Carey. Today those aren't weighed. I guess there could be a system designed in which they were weighed.

Mr. McEwen. See, I am just a farm boy, so I don't understand how this could be so difficult. If you are taking soybeans to the market, you roll in and you weigh them. Then you get to the grain elevator and the guy says, here is how much they are, and you say, oh, no, you are off so-and-so, go back and weigh again. They go back and weigh it again and say, by golly, you are right.

They do that for a living all day every day. I can't see why if you have billions of dollars of shipping and cranes, that somewhere along somebody can't come up with a way to weigh it. Am I missing something?

Mr. Carey. No, I am saying that they can. I am saying that the way it is done now, however, it is not weighed, so when the trucker comes in and picks it up, he doesn't know what it weighs.

Mr. McEwen. Either they weigh them themselves or, before they dump them on the back of a truck, they weigh them and say, here is how much it is. That sounds like a possible solution.

Mr. Carey. It could be part of a solution, but the container could still be within the weight limits, but depending on what chassis you put it on, how many axles——

Mr. McEwen. Then you have a new ball game. If the trucker doesn't know what his weight limits are and where to adjust his weight rate, then you ought to nail him. But right now, the poor guy is trying to make a living and they dump it on there, and he has no idea how much it weighs until a State Patrol guy whips him over and weighs him and says, you are out of bounds.

Mr. Carey. Yes, sir, I agree.

Mr. McEwen. There has to be more to this than what I see. It doesn't seem overly complicated. Either you do it at the place of origin or when you take it off, you weigh it and then you solve the problem.

Mr. Carey. The only thing I would say, to put it in perspective, is you are talking about tens of millions of containers, and you are adding one more step in weighing those.

You weigh 1 or 10 or 100, it is no big deal. You start weighing tens of millions a year, it is a big deal.

Mr. McEwen. You know what I do on Friday morning in October, I walk down—truck, truck, truck all the way down the road—everybody unloading their corn at 5 in the morning. They seem to get it done. You are right, you are going to have to weigh it, but also there is a lot of steps involved in ripping up and repairing the highway, so if you just throw in one little step to see how much it weighs, it seems so simple to me that I have to be missing something.

I hope to be educated further. Thank you.

Mr. **Anderson**. What portion of the 33 percent potentially overweight containers in the PIERS study would you estimate are inadvertently versus intentionally overloaded?

Mr. **Carey**. I wouldn't hazard a guess. We have no way of knowing at the Commission.

Mr. **Anderson**. One estimate made by one of the witnesses was approximately 40 percent.

Mr. **Carey**. I wouldn't know. I would comment that, the cause of containers to be overloaded is primarily economics. The motivation to overload is driven by the desire to be competitive.

Mr. **Anderson**. Is there a difference for exports versus imports? You are not sure of that, either?

Mr. **Carey**. We could undoubtedly have more control over exports, since they originate in this country.

Whereas, the import side, originates in another country, and we have no control over foreign ports or how they load the boxes or how much they put in them.

Mr. **Anderson**. What revisions would you suggest for the PIERS study if that basic approach was to be utilized again?

Mr. **Carey**. I think it would be helpful to know which of those boxes are being transported over the highways versus which are not touching the highways, that is, are going on barge or rail. At least that would give you some idea of the extent to which shipping containers contribute to the highway issue.

Mr. **Anderson**. Foreign commerce seems to be using longer and heavier containers, and these will eventually work their way over to the United States, exacerbating the problem. Do we have any leverage on foreign ports to control the overweight containers?

Mr. **Carey**. No, sir, we do not.

Mr. **Anderson**. I believe the DOT says no leverage works?

Mr. **Carey**. That is correct.

Mr. **Anderson**. There are 23 States and Washington, D.C., that have at least one axle weight limit higher than the Federal limits, and 30 States that allow trucks to operate interstate with a gross vehicle weight limit higher than the Federal limit. Can the Federal standards on highway weight limits and on equipment retain any effectiveness as long as the State and local jurisdictions are permitted to allow deviations on exemptions from those standards?

Mr. **Carey**. No. Without some Federal standard, of course, you are going to continue to have all of these different schemes based on the way the State or the local authority looks at it. So, unless there is a Federal standard, a shipper or a carrier is looking at a whole myriad of different laws, rules, and regulations that they have to comply with.

Mr. **Anderson**. What effect would there be on overweight container movements if these exemptions were modified?

Mr. **Carey**. There would probably be fewer overweight containers on the highway because if you modified the exemptions and put some type of cap on them, that would certainly lessen the ability of these people to put as much in the container.

Mr. **Anderson**. Mr. McEwen.

Mr. McEwen. Mr. Carey, is it within your jurisdiction to require that all containers coming into this country have a weight on the bill of lading?

Mr. Carey. Probably not now, no, sir.

Mr. McEwen. It is not within your——

Mr. Carey. Possibly not.

Mr. McEwen. Who would have that authority?

Mr. Bourgoin. There might be a basis on which the Commission, would be able to do that under estiting statutory provisions. But I think there would also have to be a factual basis which relates to a problem that is within our authority to address.

The Commission has somewhat broad statutory authority in the area of international commerce and the movements of cargoes between the United States and foreign countries. Therefore, your proposal is certainly something we could look at. It is possible that presently bills of lading actually do contain the weight of the cargo, particularly if that cargo is being rated on a weight basis.

If cargo is not being rated on a weight basis, for example on a per-container rate basis, the bill of lading may not contain the weight. The Commission could, however, consider a requirement that all bills of lading contain the weight of the cargo that is being transported.

What implications that would have, and whether it is feasible to weigh all of these containers, and at what point we do not know. This is an area of great uncertainty.

Mr. McEwen. But there has to be some weighing done. If I were a captain, I would not want to be on a ship and let anybody load anything on there they wanted. When it gets above the water line—don't you have an idea how much it weighs?

Mr. Bourgoin. I think that to a certain extent, the cranes that put the containers on the ships, within broad limits, can determine whether or not that container is overweight. I say that without being expert in the technology. But the crane cannot tell you *exactly* what the container weighs, only within a certain range.

Mr. McEwen. This is new to me. If I am transporting something, I just agree to transport a set number of containers, not by weight or anything, just so many containers?

Mr. Carey. It depends on under which tariff you are moving it and what that tariff says. It could be for X amount of weight or it could be a per container weight—the ocean carrier doesn't care how much you put in it, as long as you don't exceed the weight the container structurally can take care of.

Mr. McEwen. I think we are not totally breaking new ground on the idea. I suspect that when they load the container, they have some idea what it weighs. I suspect the captain has some concept as to how much he is taking on. I suspect they know, when they are coming into harbor, much weight is in the ship at the time, and that when they take it all off, this isn't an impossible task for the mind of man to calculate as to how to do this.

It seems like a non sequitur at the point that you dump it on the road and go out and plow up the highways and say there is no way to know.

Mr. Carey. As you get into this, we are willing to work with you any possible way. But I don't think we as the maritime regulatory agency have the solution to this highway problem. We may be a part of the solution.

Mr. McEwen. I agree. I am just feeling my way, and I am hoping you will help me.

Mr. Carey. I am a farm boy, too.

Mr. McEwen. Thank you, Mr. Chairman.

Mr. Anderson. Thank you, and thank you very much.

Mr. Carey. Thank you, sir.

Mr. Anderson. Our next panel consists of officials from the California Department of Transportation, Mr. John Van Berkle, Jr., Chief of the Office of Truck Studies, and Ms. Kathy Hoffman, Washington Representative, California Department of Transportation. Stand and raise your right hands.

[Witnesses sworn.]

Mr. Anderson. Be seated. Ms. Hoffman, you may begin.

## TESTIMONY OF KATHY HOFFMAN, WASHINGTON REPRESENTATIVE, CALIFORNIA DEPARTMENT OF TRANSPORTATION, JOHN VAN BERKLE, JR., CHIEF, OFFICE OF TRUCK STUDIES, CALIFORNIA DEPARTMENT OF TRANSPORTATION

Ms. Hoffman. This a new role for me. I generally sit behind the witnesses, so you will have to bear with me. As you mentioned, I have John Van Berkle with me, who is the Chief of our Office of Truck Studies, and he is the expert here, so if you have particular questions or detailed questions, I hope you will address them to him.

I am going to make some general remarks about the overall policy of the California Department of Transportation, and then let John fill in with all the details.

As you know, any action taken at the Federal level on this issue is very important to California's economy. Our Ports of Long Beach, Los Angeles and Oakland are among the top four container ports in the United States, so obviously, it is of great concern to us that these ports operate efficiently and within the statutory limits on weight.

The Department of Transportation for the State has concerns based on the damage to bridges and pavements because of overweight containers and also because of safety problems that occur from increased stopping distance, decreased vehicle control, and also stress on the mechanisms of trucks and their chassis.

Based on these concerns, the California Legislature in 1988 required California Transportation in cooperation with the California Highway Patrol, who is responsible for enforcing these limits, to develop a plan to enforce the weight limits that were being violated by the intermodal containers and piggyback trailers.

Did this in cooperation with an advisory task force including labor, marine terminal operators, ports, railroads, shippers, steamship lines and the trucking industry.

At this point, we came up with some potential solutions. We were preliminarily going to look at building more weigh scales, but we wanted to look at some other options that would be less disruptive to commerce at the ports and cause less delays.

We reached the following conclusions, and we were able to provide them through our studies. First of all, the containers are usually in compliance with weight limits when they are on a ship or rail car or crane, but the overweight problem arises when they are placed on a truck and required to meet truck axle load limits.

Second, the intermodal transportation system is international and very complex. Therefore, it is very, very difficult to assign responsibility for overweight containers. There are just so many different players involved.

Third, without a consistently applied, nationwide enforcement program, truck operators, railroads, ocean carriers must either transport what is given to them by a ship or accept the loss of business. In some cases, it may mean not just the loss of one load, but the loss of access to the port as well. So, it is a very serious economic problem for them.

Four, truck operators are usually the people who are being cited for overweights, but they are often not responsible for the loading of intermodal shipments. However, when they are responsible and have some knowledge of the shipment being overweight, they do have to accept responsibility, in our view. But they are not the only players here.

Five, removing some of the cargo from the overweight containers may cost more than what you would make on transporting the container. The costs are extremely high for a shipper and a transporter leads to decisions being made on the basis of economics, regardless of the damage to the public roads.

Based on these conclusions, we developed some factors for proposing solutions. Number one, any proposed solution must consider the efficient and economic movement of cargo. We are very concerned in California about jeopardizing the economic viability of our ports. They are terribly important to us and we don't want to jeopardize that.

Two, this is a national problem, not just California's problem or just an East Coast problem, and any solution has to be tied into a nationwide effort, and it should be dealt with at the Federal level. Otherwise, there will be obvious economic consequences. We will be losing trade at our ports to other States or possibly other nations.

Number three, there needs to be a level playing field for all of the players. If one railroad, port or marine terminal operator is required to inform their customers that their containers are going to be weighed, and that the loads must be legal as to highway loads, then all of the players must do the same.

We can't just apply it on a spot basis. Considering these factors and the concerns about economic viability and disruption of trade, we suggested that one of the best approaches would be to authorize access to and use of intermodal industry private records rather than adding more scales and weights. This is a particularly attractive approach because it avoids worsening the tremendous congestion in Los Angeles.

And this was a much better solution, we felt, from an economic and cost-effective point of view.

I am going to let John continue and give you more details on this. He was the author of this study, and we are pleased to have him here.

Mr. VAN BERKLE. Thank you.

As has been mentioned, with all modes of transportation, the decision of whether or not to overload really is an economic decision. Thus, any proposed solution to the intermodal container area should have the aim of changing behavior by applying appropriate economic consequences on the responsible parties.

Economic incentives to transport overweight shipments should be removed or economic disincentives of sufficient magnitude should be applied on the responsible parties. Our feeling is that if sufficient economic disincentives are applied at proper points, corrective actions can be reflected up the chain to the responsible parties by using existing institutional or contractual arrangements that exist between all the parties.

This will tend to towards a self-policing policy, as long as those disincentives continue to be applied. The issue then comes down to what type of economic issues are to be utilized by government and at what point in the intermodal chain, should they be applied.

To answer these questions, our task force separated import from export shipments. It was shown at least in California that exports actually are 79 percent of the overweight intermodal problem. In essence, we are doing it to ourselves, primarily.

I should point out, however, that commonly-quoted statements in some of the national publications indicate that imports are the higher problem. I am here to say that is not the case in California.

Dealing with the issue of exports, at all California ports, export containers on trucks are actually weighed for a gross vehicle weight at the marine terminal gates. This is done so that the marine terminal can in fact obtain a weight record or a weight of the container so that it can properly be stowed upon the ship.

However, this weight occurs after the movement has in fact gone across public roads.

Exports, however, are coming from diverse points to a central location, so the only feasible location to make these weighings are at the terminals after they have, in fact, already crossed the roadways.

Considering this operational characteristic, the task force report to our legislature recommended our Highway Patrol be given the authority to access these private weight records, these private weight records generated at the marine terminals.

These records typically include information on who is the carrier, the shipper, the type of commodity, the truck's gross scale weights, the empty weights for the chassis tractor and chassis, and the total weight of the container.

An analysis could be performed to identify what, in fact, are the overweight trucks. We would, however, require legislation within the State to obtain this information.

Now, California has what we call a Business and Professions Code violation. Anytime there is an overweight load that occurs, or if there is habitual overloading, this can also be viewed as an unfair business practice, getting an unfair advantage on competitors.

This Business and Professions Code also allows a $2,500 fine for each instance in which this type of an unfair business transaction is reported. The thinking on the exports is that as a pattern is developed for an individual shipper, for an individual trucker, whoever, that the Business and Professions Code features be applied.

And we believe this $2,500 fine, in fact, would be a sufficient deterrent for overweights.

As far as imports are concerned, imports are usually not weighed at the U.S. marine terminals. They are, however, leaving the central location for diverse points, so that it is possible to take action at at least a limited number of points within the State.

Based upon these operational characteristics, the report to our legislature recommended the Highway Patrol be given authority to access these import documents to select a sample of potentially overweight trucks for weighing at a public static scale.

Import documents such as the ship's manifest or bills of lading contain at least an estimated container weight, frequently contain the type of commodity that is being moved, or at least some description of where the commodity is coming from.

Only those vehicles suspected of being overweight and which would travel on public roads would be required to be weighed. If the full weighing reveals an overweight truck axle, the cargo would have to be lightened to bring the overweight truck within the appropriate weight limits. This is a preventive measure prior to the trucks coming on to the road.

Basically, a truck with a container on it, which is suspected and would be required for weighing, would not be cleared for on the road operation until he were in fact in a legal configuration.

A precedent for this selective type approach has actually been established already by the U.S. Customs Service in their inspection of containers for drugs.

Since we have submitted this report to the legislature, the Department has already received a request from the chairman of our Assembly Transportation Committee to develop language or propose statutory changes so these actions I just described can in fact be considered for introduction as a bill in 1991.

Enforcement efforts, however, are not the only answer, and the reports to the California Legislature also summarized what we think are needed, ongoing intermodal industry actions. Among these, we think there needs to be additional education, including educating intermodal parties on what, in fact, the public road legal weight limits are and how the number of overweights may be reduced through use of appropriate chassis equipment and that type of thing.

We think there needs to be more knowledge and information being placed out there. The proposed regulations we have been talking about, the FMC petitions, to eliminate the tariffs on a per-container basis, we think was a good idea. It obviously will not solve the entire problem, but we did support those petitions.

We think another thing that is needed is that in California ports, in cooperation with local governments and railroad companies, there is considerable effort ongoing in the planning or constructing of on-dock or near-dock rail facilities. These facilities will reduce the need for the drainage of containers on public roads. As an example of this cooperative effort is a joint powers agreement entered into by the City of Long Beach and City of Los Angeles to improve the highway facilities, which is now known as Alameda Street Corridor, linking those ports to the more central LA area.

In the letter we received from the committee, there were four questions you asked to be addressed. One dealt with the issue of our reaction to the two container petitions filed before the FMC.

As I have stated, we supported both of these flat fee petitions. This may have provided some relief, but we do not believe in fact it would have been an entire answer.

The second question that you asked is, our opinion of the PIERS data, and is additional research necessary on that. The FHWA's analysis of the PIERS data is frankly the only comprehensive data base we are aware of in this particular area.

However, those knowledgeable members on our task force that had a chance to review the PIERS data verified that, based upon their experience, it was typical of the type of activity that was going on.

Even though we had support from the California ports and our Highway Patrol when we attempted to do some actual weighing, using weighin motion equipment, we had only limited success in getting good data through actual weighing.

We would suggest if additional research is to be undertaken, it use some of these actual weighing records that are developed within the ports.

Your third question dealt with current or evolving transportation economic factors which contributed to the overweight container problem. In our opinion, one of the economic factors that has come into play on the issue of overweights, and it is a subject you have already heard discussed this morning, is the use of permits, oversize-overweight permits by selected bodies, very cheap permits, frankly, which allow overweight containers to be moved legally.

California has not taken that position, and without sounding facetious, frankly the road can't tell the difference when the load has a permit or not. The danger to the roadway is basically the same.

Your fourth question basically asked what solutions we would propose to resolve this entire issue. I think we have described those solutions today. They are contained in our report to our legislature, which we have submitted as part of the testimony.

We believe as well as legislative action being undertaken by the California Legislature, we suggest that report in our testimony be given consideration for models for future actions at the Federal level.

Thank you.

[Data on California Vehicle Code submitted by Mr. Van Berkle appears on p. 173.]

Mr. ANDERSON. We have heard estimates of $100 million a year in road damage from all overweight vehicle movements in California. Is this an accurate number?

Mr. VAN BERKLE. I think it is. I developed the numbers, sir.

Mr. ANDERSON. What portion of that $100 million a year would you attribute to overweight containers?

Mr. VAN BERKLE. We have not split that into container and noncontainer figures. That figure is for all overweights operating on our State highway system.

Mr. ANDERSON. When the CALTrans Task Force submitted its final report, were there any dissenting votes or minority opinions filed?

Mr. VAN BERKLE. I think it is fair to say the task force concurred with the general framework that we are talking about. As far as some of the specifics on how individual records may be obtained or the precise means in which they were to be used there are some differences of opinion, and the consensus of the task force is that those issues will be worked out in the legislative process.

Mr. ANDERSON. What has been the reaction from the legislature and industry to the proposal to give the California Highway Patrol access to private records?

Mr. VAN BERKLE. As I mentioned, the chairman of our Assembly Transportation Committee has asked the Department, in conjunction with our Highway Patrol, to develop the draft legislation that could be introduced in 1991, to, in fact begin the use of the private records.

If I may, there has been some concern on the part of some segments of the industry that the use of private weight records not be expanded beyond the issue of intermodal containers.

Mr. ANDERSON. Well, if California were to act alone, following the CALTrans report recommendations, you state that trade would be diverted to other States. Is that conclusion based on research or intuition?

Mr. VAN BERKLE. I would say that is based upon experience of many of the members of our task force.

Mr. ANDERSON. What were the findings of the CALTrans study done several years ago that quantified the extent of overweight container movements?

Mr. VAN BERKLE. Several years ago, our Assembly Transportation Committee had hearings on the issue of overweight containers. As part of that hearing, there was a special weighing session conducted at the Port of Oakland. At that time, the finding was that 72 percent of all intermodal containers were overweight, based upon an actual weighing.

Mr. ANDERSON. Were the numbers similar to the PIERS study?

Mr. VAN BERKLE. The PIERS study actually appears to be somewhat lower. They are into the 40-percent range.

Mr. ANDERSON. Mr. McEwen?

Mr. MCEWEN. Thank you, Mr. Chairman.

Thank you both for your testimony. Very simply, what do you think should be done?

Mr. VAN BERKLE. I think we should do what we are recommending in the report.

Mr. MCEWEN. You said in question, you didn't say what you should do. Let me read. You said the proposed solution must consider the efficient economic movement of cargo. That is answer number one. An answer in my book.

Answer. Overweight intermodal shipments are a problem throughout the nation and any solution must be applied at the Federal level to avoid the economic consequences of diversion. We are up to number two.

Number three. An even playing field needs to be maintained.

My question is this: What should we do?

Mr. **Van Berkle**. The recommendation of our task force to our legislature was that for import containers, we obtain data on the loads such as we best can. Those that are suspected of being overweight, in fact, have an on-the-road weighing, and they not be allowed to leave the port areas until they are in fact made legal.

Mr. **McEwen**. So, the port should weigh them?

Mr. **Van Berkle**. No, sir, the Highway Patrol would do the weighing.

Mr. **McEwen**. Would you set up a Highway Patrol booth? You drive through it?

Mr. **Van Berkle**. That is still being worked on as to what the best method is. There are private scales surrounding the port areas. When those would be used or when we would construct a new CHP facility, that decision hasn't been made.

Mr. **McEwen**. You would get a certificate saying you are within the limits and you can proceed?

Mr. **Van Berkle**. Yes.

Mr. **McEwen**. Thank you. That is what I wanted.

Mr. **Anderson**. What revisions would you suggest for the FHWA PIERS study if that basic approach was to be utilized again?

Mr. **Van Berkle**. I think that is a question best left to FHWA. We used the PIERS data to simply get an overall handle on the magnitude of the problem.

Mr. **Anderson**. From your perspective, can the overweight containers problem be solved without a legislative solution?

Mr. **Van Berkle**. We don't think so. The only other major option is in fact a high-intensity weight enforcement, on-the-road weighing. The problem we have in many of our ports is the extreme traffic congestion that already exists, the limited space that exists for those ports.

Any additional activity such as weighing all vehicles simply would exacerbate the problems that exist.

Mr. **Anderson**. Now, on-dock rail facilities will reduce the need for grades of containers around the ports. Are there ways States can be supportive of this type of facility?

Mr. **Van Berkle**. Yes, sir, I believe there are. We are supportive. With the passage of some of our recent propositions, it is possible for us to, in fact, financially support some of those rail expansions into the port areas.

Mr. **Anderson**. Now, if so, has this been true in California?

Mr. **Van Berkle**. As I mentioned, the major example that we have is the Alameda Street Corridor, which is a joint effort with a lot of parties involved.

Mr. **McEwen**. My question would be: If we were to pass Federal legislation to say a State had to certify that a load—intermodal container—had met Federal limits, would that be the best way to do it and leave it up to the States how they go about doing that? You either have a private system where people set up their own booth and be licensed to do it, or go through the State Patrol system or what?

It is analogous in my mind to the pollution control devices the Federal Government mandates and some States do it through local filling stations, and other people in Arizona and elsewhere have a State system.

If we were to go that way with Federal guidelines, how would you best recommend that the local weigh station be established?

Mr. VAN BERKLE. I would have to give that some more thought, frankly. We have been looking at it from a California-specific perspective.

Mr. MCEWEN. Your conclusion, basically, is that the California State Patrol would do it?

Mr. VAN BERKLE. That is correct.

Mr. MCEWEN. My only problem is when you get the back-up, there is no outlet. If you are going to go through the State Patrol place and it gets backed up you lose 2, 8, 10 hours. If you let the private market do it, let the marketplace solve the problem. That is, they have to be licensed and they have to be fair, just like we do at every gas station.

But you haven't given any more thought on that?

Mr. VAN BERKLE. Our position is we would need some official body of the State to, in fact, do it, and it appeared the CHP was the appropriate body to our task force. When they do use the private scales in the facility, or when we would need to construct a new scale facility is something that would be subject to further economic analysis.

Mr. MCEWEN. Thank you, Mr. Chairman.

Mr. ANDERSON. Thank you.

We have at least two rather large witness groups ahead of us. It has been suggested to me that we break for a brief lunch here. It is 12:30 now, roughly, and we should be able to be back here in 45 minutes, so we will be back here at 1:15.

At this time, we stand in recess for roughly 45 minutes.

[Whereupon, at 12:30 p.m., the subcommittee recessed, to reconvene at 1:15 p.m., the same day.]

[Ms. Hoffman's and Mr. Van Berkle's statement appears on p. 130.]

Mr. ANDERSON. The meeting will come to order.

The first witness of our fourth panel today representing the National Industrial Transportation League, Mr. James E. Curtis, Manager of the Domestic Distribution for the United States Borax Chemical Corporation, and accompanying him is Mr. Nicholas J. DiMichael, counsel.

Also is Mr. Fred M. Zitto, Manager of U.S. Distribution Operations for International Paper.

Finally, we have Mr. Steven Wyman of Allenberg Cotton, representing Agricultural Ocean Transportation Coalition.

[Witnesses Sworn.]

Mr. ANDERSON. Thank you very much.

I believe Mr. Curtis, you may begin.

## TESTIMONY OF JAMES E. CURTIS, MANAGER, DOMESTIC DISTRIBUTION, U.S. BORAX AND CHEMICAL CORP., ACCOMPANIED BY NICHOLAS J. DiMICHAEL, COUNSEL; FRED M. ZITTO, MANAGER, U.S. DISTRIBUTION OPERATIONS, INTERNATIONAL PAPER, ACCOMPANIED BY PETER FRIEDMAN, COUNSEL, AMERICAN PAPER INSTITUTE; STEPHEN J. WYMAN, AGRICULTURAL OCEAN TRANSPORTATION COALITION, ALLENBERG COTTON

Mr. CURTIS. My name is James E. Curtis. Since our written statement will be made part of the hearing record, I would like to make a few comments elaborating on the so-called overweight container issue in general.

The League is committed to transportation safety, as well as to compliance with all applicable laws, both in principle and in practice.

The principle is evidenced in our policy L-6, which paraphrased, states our support for strict enforcement of maximum highway size and weight limitations, and for shipper, carrier, cooperation in promoting transportation safety.

The practice is evidenced by the League's dedication and support for all highway safety related legislation enacted in the 1980's.

Additionally, the League has produced jointly with the American Trucking Associations, a brochure and videotape entitled, "Yield to Safety," and a shipper-carrier code of ethics.

The shipping community has been concerned about the possibility of overweight containers for some time. In March of 1988, the League asked the Federal Highway Administration to assist in obtaining a comprehensive study of the matter, but without success.

The Federal Highway Administration later did sponsor a study that was based on the collection—data collected from the Journal of Commerce's PIERS Master File of Import Manifests and Export Bills of Lading.

As detailed in our testimony, it takes a great deal of imagination to translate that data into assumptions on the presence of overweight containers.

We also would note the Federal Maritime Commission's recent denial of petitions requesting a prohibition of per container rates, and establishment of absolute maximum loading limits for 20 and 40-foot containers.

We believe the denials were well founded. We would urge the subcommittee to pay particular attention to the FMC's findings that the petitioners asked for very simplistic and uneconomic solutions to a complex problem and that the FHWA's PIERS Study does not provide a sound basis for governmental action.

Against this background, shippers, motor carriers, ports, shiplines, ocean conferences, public agencies and elected officials have engaged in spirited debate as to the magnitude of the problem, who is at fault and how best to resolve it.

In an attempt to end this controversy, the League, in conjunction with motor carrier, port and maritime representatives, earlier this year established the International Container Loading Task Force.

The panel has had two meetings and a third meeting is scheduled for July 20.

Its mission statement reads: To develop national solutions to promote safe, lawful and economic movements associated with the maximum loading of containers in international trade.

While our work is not complete, we have reduced our initial long list of solutions to the following medium-sized list: First, greater police enforcement, particularly around ports and intermodal rail terminals.

Trucks transporting domestic shipments may encounter sometimes as many as 15 scales during a trip across the country, thus making noncompliance highly uneconomic. International shipments frequently only move a few miles by highways to or from ports or rail terminals, and many encounter no scales.

Second, a weight inspection program at the ports for import and export shipments. This was selected to help augment police enforcement. It could be very effective since shipments could be delayed while being made legal for highway transit or for loading aboard ship.

Third, stringent penalties to discourage overloading. We believe that in addition to potential shipment delays, charges for making an overload vehicle highway legal, and fines should apply to the U.S. importer or exporter of record. These fines would apply to significant overloads that are beyond tolerances, yet to be established, to accommodate equipment variability.

Fourth, tolerances for weight limits. This is needed due to the higher variability of equipment, weights, and dimensions. A container, tractor and chassis combination may be legal in Kansas City, when delivered to the rail terminal. However, when removed from the rail terminal in Los Angeles, and placed on a different chassis with a different tractor combination that will haul it to the port for overseas shipment, the vehicle may be overweight, either in gross or axle or both.

The task force is considering a tolerance in the area of 5 percent on both gross and axle weight limits to resolve this problem.

Fifth, development of a shipper carrier equipment loading educational program. The League's experience with the American Trucking Associations on joint safety programs leads us to believe that such an effort could be successful in increasing shipper and carrier awareness in the variety of container loading situations that need to be accommodated.

Sixth, increase highway weight limits. We realize this is an unpopular alternative but to avoid discussing it would be comparative to an ostrich burying his head in the sand. U.S. business cannot compete in international commerce with restrictions that are harsher than those of our foreign counterparts.

We must fashion a solution that takes into consideration the realities of the world markets in which we must exist.

In connection with this point the task force hopes to quantify the extent to which U.S. business will be negatively impacted, by, for example, being limited to 45,000 pound per shipment to a foreign customer when that customer can purchase similar products from another foreign source in perhaps a 55,000 pound shipment size.

A possible solution to this competitive problem could be a network of specific high-quality highways and bridges that would be identified for the movement of containers at these higher weights—similar to the longer combination vehicle network that is being discussed in other areas.

Seventh, use of specialized equipment. A significant amount of the potentially overweight containers identified in the FHWA PIERS Study were 20-foot containers. The use of longer chassis would make these containers legal within the present 80,000 pound vehicle weight limit. Shippers and carriers have been reluctant to invest in this equipment due to, among other things, the uncertainty over the two, now resolved, FMC petitions, and the potential for legislation which might negate the economics of the investment.

The use of a sixth axle on vehicles hauling 20-foot containers would help resolve the current problems. Unfortunately, not all states have fully adopted the federal weight laws so this beneficial equipment cannot be used in all states.

Eighth, further study is needed to quantify container weights related to equipment and the methods of transporting them.

The possible solution I have outlined are just that, possible solutions. They have not been selected by the task force as our official recommendations, nor have they been submitted to the League for its review and action.

I prematurely am presenting them as evidence of our activity and our desire to fairly evaluate and resolve this problem.

On behalf of the League I want to thank the subcommittee for the opportunity to present the views of the shipping public and I am prepared to answer any questions you may have.

Mr. ANDERSON. Mr. Fred Zitto.

Mr. ZITTO. My name is Fred M. Zitto, Manager of U.S. Distribution Operations of the International Paper Company.

Accompanying me is Peter Friedmann, Counsel to the American Paper Institute.

I appear for the American Paper Institute, who I may sometimes refer to as API.

To conserve the time of this committee, I have also been authorized to speak for the National Forest Products Association and the National Particleboard Association.

API is the national trade association which consists of approximately 175 manufacturers who produce 90 percent of the nation's output of those products.

The National Particleboard Association is the national trade association representing producers and distributors of particleboard and medium density fiberboard.

The association's 18-member companies produce over 80 percent of the U.S. output of particleboard and medium density fiberboard.

The National Forest Products Association is a national trade association representing the interests and views of owners and managers of forest lands, manufacturers of forest products and affiliated regional and product associations in virtually every state.

The forest product industry, which these associations represent is one of the nation's largest exporters providing a total contribution to the country's balance of payments of nearly 15 billion in 1989.

This breaks down to $8.7 billion in pulp and paper and over $6 billion in solid wood products.

The forest industry's position is that petitions P3-89 and P4-89 were attempts to use an inadequately documented and poorly defined safety issue to reduce competition.

The Federal Highway Administration's analysis of potentially overweight containers, the PIERS Study, is severely limited by its failure to include many real world factors critical to the transportation of containers.

A comprehensive and definitive study of container loadings is an essential starting point for addressing the issue.

The forest product industry is greatly appreciative of the opportunity to assist this committee in evaluating the effects of transporting intermodal containers by truck and developing programs where appropriate for improving the safety, legal and efficient handling of containers.

Compliance with safety and legal requirements in loading intermodal containers is a complex procedure requiring consideration of roadway limits, axle weight limits, bridge weight formula, and the limitations of the container, the ship, truck, and/or the rail car.

Nevertheless, it has been the experience of our members that shippers and carriers who are committed to safety and compliance with the law can manage this problem and manage it well.

Our concern is that any action that is taken be based on full factual and specific data so that the action can be effective and commensurate with the magnitude of the problem.

Any action that is based on inadequate, incomplete, or erroneous information can adversely affect the efficient utilization of containers and result in significant and unnecessary increases in the costs to U.S. exporters.

Any unnecessary increases in costs or unduly restrictive regulations that handicap U.S. producers in competing in world markets certainly are not in the interest of U.S. producers, carriers or the general public.

There is also a need, in our opinion, to sort out from the voluminous statements, opinions, and positions taken by various parties the actual or perceived problems involving safety, compliance with the law and damage to the highways from efforts to shift blame and penalties for violations between the parties, and to exploit safety in order to blunt competition and change commercial relationships between the various parties.

The objective should be to improve safety and compliance with the law, not to assign blame, shift responsibility, or blunt competition.

The forest products industry viewed petitions P3-89 and P4-89 as attempts to exploit an inadequately documented and poorly-defined safety issue to eliminate competition and consolidate the economic control of the shipping conferences.

The petitions depended heavily on the Federal Highway Administration's PIERS data that never purported to be anymore than a statistical derivation of potential overweight containers.

If they had been approved the petitions would have banned or severely limited the assessment of per container rates on thousands of safely and legally loaded containers, many which moved by rail, traveled over private roads, were stuffed at the ports and never traveled over the interstate highways or were shipped in specialized equipment or under special permits that provided for the safe and legal shipment over the public highways.

The resulting reduction in the efficient loading of containers and the dampening effect on competition would have exacerbated recurring shortages of containers and significantly increased shipping costs at the expense of the competitive position of U.S. producers in world markets.

The Department of Transportation through the Federal Highway Administration and the various state and local authorities has the necessary statutory authority to address issues of highway safety.

We agree fully with the Federal Maritime Commission's findings that it would be inappropriate for the FMC to exercise jurisdiction in this area and that the Federal Highway Administration study upon which the petitioners really does not provide a sound basis for commission action.

The Federal Highway Administration's analysis of overweight containers is based on a sampling of the Journal of Commerce Master File of data (PIERS), recorded from import manifests and export bills of lading for containerized freight moving through U.S. ports.

The sampling techniques may be statistically sound and the summary of loadings by container size professionally performed.

However, the study is severely limited by the lack of data required to determine the following factors: (1) the extent of the movement over the public highways, (2) whether the container moved by rail, (3) whether the containers were stuffed at the port, (4) the number of containers that moved on special permits or in areas exempt from the 80,000 pound highway limit. The number of containers that moved on specialized trucking equipment permitting loads in excess of 80,000 pounds.

There was no matching of actual containers to particular trucking equipment, no check of the distribution of the weight over the axles, and not one shipment was actually weighed.

Based on this lack of real world data there is no way to prove or disprove the number of containers operated in violation of the law or that were unsafe.

We agree fully with the Federal Maritime Commissions finding that the study does not provide a sound basis for economic action, or in our opinion, any action.

The forest products industry fully endorses the National Industrial Transportation League's recommendation that an appropriate authority, such as the Transportation Research Board, General Accounting Office or some other recognized independent body be authorized to conduct a comprehensive and definitive study.

Effective and responsible action in this highly important area depends on an adequate and detailed information base.

A comprehensive and definitive study of container loading would appear to be an essential starting point for developing solutions.

In the meantime, initiatives addressing the issue should proceed and some generally accepted programs for improving safety performance should be accelerated.

For example, at the initiative of the National Industrial Transportation League an International Container Loading Task Force consisting of shippers, motor carriers, ports and ocean carriers was formed in January of 1990 with the objective of developing comprehensive private sector solutions to the problem.

I am privileged to be the forest product industry representative on the task force.

We have met twice and are scheduled to meet again in July. I have been pleasantly surprised by the constructive and cooperative attitude that has developed in the growing consensus on approaches to solving the problem.

The major recommendations of the group have already been outlined by Mr. Curtis.

As these suggested actions are developed, flushed out and refined, the individual members of the task force will report back to their constituencies in an effort to build a broad consensus for cooperative action.

On behalf of the forest products industry, I would like to express our appreciation for the opportunity for participating and I shall try to answer any questions you may have.

Mr. ANDERSON. Mr. Wyman, of Allenberg Cotton Company.

Mr. WYMAN. I represent the American Cotton Shippers Association as a member of the Board of Directors of the Agriculture Ocean Transportation Coalition, a coalition of the U.S. agriculture industry concerned about ocean transportation issues.

Originally scheduled to testify on behalf of the Agriculture Ocean Transportation Coalition was Patrick Hanneman, a Vice President of Dole Citrus, which I know is a major constituent of yours, Mr. Chairman, in Southern California. He is out of the country, and I was asked to testify in his place.

Included in the coalition, on behalf of whom I am speaking, is the citrus industry, the cotton industry, the fruit and vegetable industries, beef, pork, forest products, hay and many, many other agricultural commodities.

We also include the suppliers to the agricultural fertilizers, for example. The cotton industry alone generates exports approaching the equivalent of 100,000 40-foot containers valued between $2.5 and $3 billion per year. Members of AgOTC and ACSA are involved in the marketing and sale in excess of 90 percent of these exports.

The Agriculture Ocean Transportation Coalition has actively opposed the apparently simplistic proposals by the ocean and truck carriers as presented to the Federal Maritime Commission. We believe that these proposals to either ban per container rates, or to oppose new and very low national weight limits, are designed primarily to reduce competition or increase the number of containers, and thus increase the revenues of the carriers who made the proposals.

We believe that the safety issue is being used to camouflage this underlying objective.

The AgOTC membership is extremely concerned about safety. We do not load containers above safe levels. We attempt to work with carriers for whom safety is an important component of the transportation business and to shy away from those carriers for whom safety is not important.

With this in mind, the AgOTC has concluded that it is possible to conform with highway weight limits currently imposed by states as well as the Federal Government and to operate safely, without resorting to limitations on the efficiency of the developing container technology.

We believe that the term "overweight container" is, in itself, misleading. Our members do load containers, in excess of the limits which the carriers have proposed that the FMC impose nationally.

But we do so in a manner which conforms with national, state and local laws and safety standards.

Container technology has enhanced international ocean commerce. It has benefited, among other ports, the Ports of Los Angeles and Long Beach in particular.

We believe that these ports and the U.S. international trade posture is benefited by maximizing efficiency in ocean transportation. The proposals of the carriers are, simply stated, designed to limit efficiency, to increase carrier revenues, to increase the costs to U.S. exporters.

Such restrictions will increase the number of containers moving in already congested port areas such as Los Angeles and Long Beach.

U.S. agricultural exports, whether produced in Southern California or elsewhere in the country, always compete with similar products produced in foreign countries is tremendously cost sensitive. Reducing efficiency in container transportation increases our costs, with the immediate result being reduced export opportunities.

Some commodities, such as cotton, are covered by the marketing programs contained in the current and proposed farm legislation. Such increases will not only make these programs less effective, but also more costly to the taxpayer.

AgOTC members have found many ways to maximize container transportation. Some of our members truck their products to port warehouses, where the container is stuffed. In other cases AgOTC warehouses, where the container is stuffed.

In other cases, AgOTC members' plants are located immediately adjacent to marine terminals. Other AgOTC members load containers on railroads which have spurs leading directly into facilities, and then transport the containers exclusively by rail directly onto the marine terminal.

Other AgOTC members load containers on trucks utilizing special axle technology in order to distribute the load safely and legally. In all these situations, AgOTC members' shipments do not travel on highways utilizing standard truck chassis.

While the containers may be heavy, they are not overweight, they are not unsafe, and they are not illegal.

The question of how to maximize container technology efficiency in a safe manner is one which the private sector can resolve among themselves. There is already a task force in place which represents all the various carriers, shippers, marine terminal operators, and port authorities who are participating in the hearing.

Please let this task force work out this problem.

There is no need for legislation, or for additional federal intervention into an area where state governments already have jurisdiction. A simplistic "solution" as requested by the carriers, will have extremely detrimental impacts on many other industries, including the companies that the AgOTC represents.

I would like to thank the committee for allowing me to make these comments.

Mr. Anderson. Thank you very much, Mr. Wyman.

I believe that is all the statements, isn't it?

Well, I have got a few questions.

First the Department of Transportation's test mentions there is nothing to prevent a carrier and shipper from contracting for a bonding requirement to cover overweight fees.

How wide spread is this practice now?

Mr. Curtis. Directing it to any one of us specifically?

Mr. Anderson. Any one of you, yes.

Mr. Curtis. I will give the first shot. I am not aware of any such bonding. Also, in the brief time I have had to think about it, I do not see where bonding to ensure payment of a fine will do anything to reduce the overloading of containers.

Mr. Zitto. Mr. Chairman, I had never heard of it before it was proposed by the DOT, but the DOT said it was minimally used and they themselves had some real question whether it would be feasible. I don't see how it would change anything or where it would be feasible at all.

Bonding is usually done to guarantee the financial viability of someone, a good percentage of shippers are very large shippers who are financially responsible. Bonding, if the effect is to have a shipper guarantee the payment of fines for a trucker and take the responsibility out of the truckers' hand, we don't think this is appropriate.

In fact, it would relieve him of any responsibility for complying with the laws.

It just doesn't make much sense to us.

Mr. Anderson. What revisions would you suggest for the FHWA PIERS Study, if that basic approach was to be utilized again?

Mr. Curtis. I do not believe that the PIERS data would be the basis for any future study. A future study needs to be related to a sampling of specific shipments by specific modes of transportation, and not a generalized paperwork study.

Mr. Anderson. What portion of the 33 percent potentially overweight containers in the PIERS study would you estimate are inadvertently, versus intentionally overloaded?

Mr. Zitto. There was no way we can respond to that. There is no data base and it would be mere speculation on our part, and that is the problem with the PIERS study itself.

You need a more definitive study so we know where the incidents of the violations are, whether minor or major and whether they are actual violations or just merely technical.

Mr. Anderson. One of the estimates by one of the earlier witnesses was 40 percent intentionally.

Now, is there a difference for imports versus exports on this?

Mr. Zitto. We simply don't have any data that could help us make a determination of that.

Mr. Anderson. You don't know if there is a difference between imports and exports and whether it is intentionally or unintentionally?

Mr. Zitto. No, sir, and under your expert probing of the other witnesses you asked that question; everyone responded that the data was not available to make that determination, and we are in the same position.

Mr. **Anderson**. Foreign commerce seems to be using longer and heavier containers, and these will eventually work their way over to the United States, exacerbating the problem.

Do we have any leverage on foreign exports to control the overweight containers?

Mr. **Curtis**. From the shippers' standpoint I am not aware of any situation where we really have control.

Mr. **Anderson**. Do you feel that a carefully crafted petition to the FMCV could overcome the SEUSA and TWRA shortcomings?

Mr. **Zitto**. We do not. That starts with the premise that the FMC is the appropriate agency to address the question of safety and highway weights.

The FMC itself said it was not and we agree fully with that and we don't see any way of curing by another petition that fatal defect.

Mr. **Anderson**. We thought if we should ask anybody, it should be people like you. You are out there you are doing it.

Mr. McEwen.

Mr. **McEwen**. Thank you, Mr. Chairman.

Let me ask a couple of questions just to find out what we are dealing with here.

Have any of you done any studies or have you been informed or been briefed on what happens to highways when one axle is significantly overloaded and the impact that that has on the highways?

Mr. **Curtis**. The shipper-carrier task force has not gathered nor has it been briefed on that sort of data. Personally, I am not really involved in that type of information on a daily basis.

Mr. **McEwen**. Any of you ever?

Mr. **Zitto**. I am not aware of any significant studies that would really pin that down. There are always speculations and assertions made by one party or the other, as to the damage on the highways, but it is usually an opinion, rather than fact.

Mr. **McEwen**. Every transportation department in America has these sort of things and it is kind of an ongoing process—trying to find where the burdens are, what different weight limits do to different levels of concrete, versus asphalt, et cetera, et cetera.

From your statements almost all of you have said there really is no problem, so I was curious, if you are on the shipping end, I wonder if you deal with the transportation end? Ever deal with the highways or ever deal with the asphalt?

If you are not dealing with that you probably don't see a problem, but the truth of the matter is there is a problem.

Mr. **Zitto**. Sir, we are not experts in that area, as you obviously can detect, that is why we comply with the laws and regulations of the state weight limits that are in effect.

Mr. **McEwen**. Okay. That is the most helpful to begin with, because there is a problem.

If you overrun the limits, the degree to which you are overweight is the degree you destroy highways and that is an extreme cost to the nation and cost to the taxpayers. Therefore the idea that came up in the test was if you asked somebody to weigh it this would be a cost to the consumer. There is a massive cost to the consumer all day every day in trying to maintain the highway system.

One truck improperly loaded can do more damage in one afternoon than a thousand cars driving for five years. It just has to be the reason that we have these kinds of regulations, so that we don't do damage.

Along interstate highways you have weigh stations, in all states. What is so significantly different between a truck being weighed at a weigh station and a truck being weighed leaving a port?

Why, from your testimony would the cost to the consumer explode and the transportation system come to a halt, if this weighing were done there and not on the interstate?

Mr. ZITTO. We have never said that, never made such an assertion.

Mr. MCEWEN. There are four or five references. I just jotted it down. Every time I made a little note, increase cost to consumer, increased burden, et cetera, et cetera.

What am I missing that is so much more difficult doing it there than doing it out on the interstate?

Mr. CURTIS. I concur. I recognize that in my testimony. I cannot speak for the others on the task force, but, in fact, one of the seven proposals we are evaluating is potentially weighing every single container through a port, import and export. That may not be one of our final recommendation, but it is one of the considerations.

These solutions have a cost, but we recognize if there is a serious container overweight problem, we must incur some cost, perhaps in conjunction with the truckers and the ship lines, to pick out the bad apples who may be causing this problem, if it exists.

Mr. ZITTO. Mr. McEwen, we are opposed to these FMC petitions, but we have not opposed weighing at the ports.

In fact, it is one of the suggested solutions that our task force that consists of ports, motor carriers, shippers and shipping lines is evaluating and there may be some merit to that.

It may be a good approach.

Mr. MCEWEN. I appreciate that.

Mr. Wyman, you said that the question of overweight containers is a misnomer. There is no such thing as an overweight container?

Mr. WYMAN. There is an overweight—there is such a thing as an overweight container but it is in the context of the mode of transport utilization by the port. Containers on doubles or single stack rail car is a load a higher permissible weigh than a container being transported on a standard chassis to a port.

By the same token the same lading might be loaded in a boxcar or a conventional dry van in which case the weight limit would be higher on the net weight of lading.

Mr. MCEWEN. The best terminology? An overweight truck, once the container is on the truck?

Mr. WYMAN. Pardon?

Mr. MCEWEN. Just call it an overweight truck, once the container is on the truck, if it weighs too much. Is that the appropriate terminology?

You said to say an overweight container was unfair. If we require that the containers have a weight on the bill of lading so that whoever hauls them knows how much they are hauling, how difficult is that?

Mr. ZITTO. We see it as a shipper responsibility to provide the trucker with information he needs to determine whether he can transport that load safely. Many shipments do have the full information on the bill of lading.

Of course, we can't speak for every shipper in the country.

Mr. CURTIS. The definition of shipper is a problem. There are shippers who are manufacturing companies like mine. There are shippers who are truckers themselves. Rail lines and brokers are shippers, as well, so there is a magnitude of people that fall in the category of shippers.

We cannot speak for all. For Mr. Zitto and my company, for example, we know what our shipments are going to weigh and tell the carrier that so he has the opportunity to send the right equipment, or to tell us that he cannot transport that weight if for some reason the shipment is too heavy.

Mr. MCEWEN. So there is no difficulty on anything that you ship identifying how much it weighs?

Mr. CURTIS. No.

Mr. MCEWEN. Do you see anything wrong with a Federal requirement that that be done on all containers?

Mr. CURTIS. I do not.

Mr. MCEWEN. Would that not solve our problem?

Mr. ZITTO. It would help, but, again, the situation is very complex and probably will require a range of solutions.

For one thing, there is an educational problem. An area as complicated as this does require educating shippers generally.

One of the things the National Industrial Transportation League of this Joint Task Force is doing is mounting an educational effort. So it will take an array of things to address the problem properly.

Mr. MCEWEN. Thank you, Mr. Chairman.

Mr. ANDERSON. To your knowledge, what percentage of companies reimburse the drivers for overweight fines?

Mr. ZITTO. I don't have the slightest idea. There is just no information available.

Mr. ANDERSON. We are told it is being done.

Mr. CURTIS. I don't have any idea what the percentage would be either.

Mr. ANDERSON. Are U.S. exporters typically aware of highway weight limits at destination points in Europe or Asia?

Mr. CURTIS. I think, in general, we are not. Unless there is some specific problem that is fed back to us by our customers or our ship lines in those countries, we are not particularly aware of any problems.

Mr. ZITTO. I don't think the shipping public generally is aware, but large volume shippers that ship to highly concentrated areas, for example, the forest products industry ships large volumes of wood pulp to particular countries where they may have agents.

In those cases, we do know, but in general it is not knowledge that the average shipper has.

Mr. ANDERSON. From your perspective, can the overweight containers problem be solved without a legislative solution?

Mr. ZITTO. At this point in time, we think so, and we are very hopeful that it can be.

Again, the Joint Task Force has come up with an array of solutions, one or two of which may need some change in regulatory procedures or some legislation.

We are not at the point yet where we can make that determination, but once that determination is made, we certainly would be pleased to come back to you for further guidance.

Mr. ANDERSON. I would hope that you could because every so often I know we get criticized because we don't come up with so-called legislative solutions and the implication is, well, that is the simple answer to it and yet you are the people who should be able to tell us when we should do that or when we should not and why.

So, I think it would be good if you could come up with some answers on those.

Thank you very much for your presentation.

[Mr. Curtis' statement appears on p. 114.]

[Mr. Zitto's statement appears on p. 163.]

[Mr. Wyman's statement appears on p. 159.]

Mr. ANDERSON. Our next panel is Mr. K. Michael O'Connell, Counsel, Owner-Operator Independent Drivers Association of America; Mr. Thomas Adamski, Chairman, Bi-State (New York, New Jersey) Harbor Carriers Conference; and Mr. Jerry Bakke, Past President, Waterfront Rail/Truckers Union, California.

Please rise and raise your right hands.

[Witnesses sworn.]

Mr. ANDERSON. You may be seated. Mr. O'Connell. Please proceed.

## TESTIMONY OF K. MICHAEL O'CONNELL, COUNSEL, OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION OF AMERICA; THOMAS ADAMSKI, CHAIRMAN, BI-STATE (NEW YORK, NEW JERSEY) HARBOR CARRIERS CONFERENCE; AND JERRY BAKKE, PAST PRESIDENT, WATERFRONT RAIL/TRUCKERS UNION, CALIFORNIA

Mr. O'CONNELL. Thank you. Chairman and committee staff, My name is Michael O'Connell, and I am counsel to the Owner-Operator Independent Drivers Association of America.

Owner-Operators are small businessmen and women that operate pulling the chassis and the containers that we have been discussing today import areas. Owner-Operators are disproportionately involved in the inter-modal transportation movement of these containers.

Prior to approximately three years ago, inter modal transportation was primarily the province of trucking companies. Owner-operators have become involved as rates have fallen. Overweight vehicles are a very serious highway problem. They impose a substantial burden on the infrastructure, as has been discussed this morning, and they present a very serious safety concern.

The Federal Highway Administration estimates that as many as one-third of all containers could violate federal weight laws. Unlike the previous panel, OOIDA tends to agree with the PIERS data and believes that the data is, while not precise, at least an indicator of the dimension of the problem. It also reflects the experience of our membership.

The type of equipment generally used in port operations indicates that most of these vehicles will violate weight laws if they are operated on the highways. On the most commonly used chassis, the operators are unable to slide the axles and distribute the weight to properly satisfy for the bridge formula.

As DOT witnesses noted, heavy cargoes inflict substantial damage on the highways. In addition, vehicle conditions in port areas are often some of the poorest in the trucking industry.

The equipment frequently has defective brakes, defective lights and defective suspension. Attachment one to the Association's written statement shows that there are six out-of-service violations on a single vehicle.

This citation is not atypical. It was chosen at random from a group of citations sent in to the Association.

Among the listed items are brake shoes that do not move when the brakes are applied and rust in the brake system.

The vehicle was carrying a placarded load!

OOIDA members report that in the poets they receive vehicles with faulty suspension, bad tires—we had a report in one case of up to four layers of cord showing on a tire, and inoperative brake clearance and marker lights.

These vehicle conditions, when combined with an overweight container, create a recipe for disaster. Unfortunately, the drivers themselves have little or no control over the situation. A typical driver waits in line for up to two hours to pick up a chassis, and if the chassis is defective, he must spend additional uncompensated time getting it fixed at the repair yard, or be put at the end of the line to wait another two hours to get an additional chassis.

As Mr. Bakke, I am sure, will tell you, those drivers that are willing to run that risk are frequently put on no-load lists and are no longer allowed to operate in the particular port areas.

Basically, if someone objects to the safety condition of the chassis that they are picking up, they either face an economic loss or deprivation of the right to drive within that port area.

Drivers picking up chassis usually get a different one every time While the average driver could possibly tell the weight of the container that he was hauling if he were hauling the same chassis all the time, they cannot when they get a different chassis each time.

The suspension, brakes and the tires all affect the feel of a particular chassis. Just as no two cars ride exactly alike no two trucks ride exactly alike. Unless the driver has experience pulling the same chassis with different weights on it, you really can't tell with any accuracy what the weight is on the back end of the truck.

To estimate the weight even within two or three tons, you would have to have a driver that had substantial experience with that individual chassis. While they have no control over loading, load selection, or even the ability to tell the weight of a load, drivers are penalized for weight violations.

Attachment two to the Association's testimony represents an example of an overweight citation for which the driver had to post a bond of $1,347 and yet he received no more benefit than if the load was legal. He was compensated normally. In response to your previous question, Mr. Chairman, OOIDA has found that the companies are very reluctant to pay overweight fines, but they do pay a "scale fee."

Attachment three to OOIDA's written testimony contains two owner-operator settlement sheets.

Both came out of the Long Beach area. Both sheets indicate the payment of a "scale fee" for specific loads. Such fees are paid by the shipping companies when there is a known overweight to compensate the driver for the extra time and mileage it takes to run around the permanent scales and to avoid detection of the overweight.

Before the fees can be paid, the shipping company has to know what the weight of the container is. "Scale fees" are common in some port areas.

The problem of overweight containers is not one of international competitiveness as suggested by previous witnesses. The existing Federal weight limits are based on maintaining the integrity of our highway system. Any domestic movement that travels overweight would be subject to ticketing. Further, it is likely that it would be subject to being weighed several times in route. OOIDA believes that inter-modal containers should be subject to no less.

The issue must be addressed in the context of existing weight laws, and at the Federal level. Any suggestion that we should amend the weight laws upward should be very carefully evaluated in light of the Federal spending crunch that we are now in, and the realistic availability of funds to maintain and reconstruct the national highway system.

The association would be opposed to any increase in weight limits.

OOIDA urges vastly increased weight enforcement at ports. Containers should be weighed individually. Overweights should be stopped and the container unloaded before it leaves the port until it is able to achieve a legal weight limit. The unloading costs should be borne by the receiver in the U.S. Lastly, any fines or penalties for an overweight load that is found traveling on the highways should be borne by the United States receiver or shipper.

Thank you.

Mr. Adamski. Mr. Chairman, I am Tom Adamski, Chairman of the Bi-State Harbor Carriers Conference, and I thank you for the opportunity to testify before you.

I would like to digress from reading my statement. I feel I didn't expend all this effort to come here and read my statement to you, so I will refer to it, but I would like to make you aware of what a normal day that we experience and how we get touched somewhat by the overweight problem.

In our normal waking moments, we usually turn on a radio or something similar that causes us to awake and we find more than likely that the radio probably was imported so we have some container activity we are initially involved in. But then we have the unique opportunity of walking into our bathrooms and finding the floor may be a tile floor, if you will, and that the tile floor has great possibilities of having been imported into the United States, and more than likely, as the PIERS data suggests, in an overweight fashion.

The commode, that we may have a chance to use, may fall into the same overweight category in that a predominance of commodes which are now being imported from Brazil. Therefore, we have already been touched in the first five minutes by overweight containers.

We can get into more examples to see how dependent we are on import/export activity just to get through our first two hours.

We may have a ham and egg sandwich and find that the ham may have been imported form Poland or Denmark. But it is something that we take for granted as we take for granted breathing.

We are very dependent on import/export activity. There are great needs for making sure that all things play themselves out properly. We may even go out to a Honda that was made in Marysville, Ohio, that has been manufactured with products from this country and yet is the number one selling domestic foreign car in the United States, and we say that is a heck of a deal that we are getting ourselves involved into. But this shows the impact, we don't know where the parts came from, but we have concerns that have to be addressed in daily activities.

Highways—as previous testimony indicated, there is a very serious deterioration to the roads in the event we have 90,000 pounds and prior testimony suggested that the deterioration factor is enhanced by two-thirds—I suggest to you that if you look at all the permitting available, the permitting which the eight eastern States that do allow permitting for overweight containers and do not consider them divisible and contrary to other testimony, I am suggesting to you that there are 40 other States that do consider containers divisible, in other words, that the problem can be solved when you cross the border, if you would, from Maryland into West Virginia, all of a sudden the umbrella that that unit was traveling no longer is there has some very serious deteriorating effects. Our studies suggest that the first axle can never be overweight—almost—I hate to use never and always—but in almost every fashion could not meet the 12,000 pound limit so that it gets a free ride in that it is only traveling at 9,000 pounds, 9,500 pounds.

The next two axles usually don't have 34,000 pounds on them, but the last two usually have in excess of 34 and probably up around the 40,000 mark.

Take the 90,000 pounds and divide that by five, that would suggest to me, that is 2,000 pounds per axle. So if 2,000 pounds per axle causes two-thirds of the deterioration, it seems to me that the last two axles, if we have enough of these last two axles traveling the highway, we have a very serious problem that we have to deal with.

And I would suggest to you that as the highways, I consider them a national treasure. This is a jewel that the truckmen have to use, that we have to use to get to our very livelihoods—this is as concerning to the trucking industry as the oceans would be concerning to the steamship lines, as the assembly lines would be of concern to the manufacturers.

This is a serious concern, but the more serious concern is immediately the road deteriorates and the truckman, whether it is through a Federal highway use tax or whatever tax, we have to now sit there and make these roads better, if you would, but it doesn't come out that way.

It is everybody that plays into this. It doesn't come down to just the truckman paying for the road. It comes down to the fellow that working out at McDonalds. He is paying for it whether he likes it or not. That has to be corrected and it can be corrected easily.

We have heard everybody say they don't have a solution to it and everything that we suggested is simplistic. I don't think that we don't have solutions to it.

I think that is the purpose of us being here talking. I think we have solutions to it and it is sometimes simplistic and if it is simplistic, it doesn't fly.

I have a problem with that. Sometimes the simplest things are right in front of us.

But to get a little bit further down the road with who the truckmen are that we currently have appearing in inter-modal activity, which is what we are talking about, for the most part, they are smaller operators, entrepreneurs, if you would. They are usually underfunded with dollars but they are overfunded with enthusiasm and daring, and what happens—they are willing to take risks that other people would not and how do these risks come about? These overweight containers that may be offered to the truckman, if you would, that doesn't want to take a shot at moving these loads will forego, maybe this entrepreneur has to establish himself, maybe he has a truck payment to make, he is then willing to take that shot and the cycle continues.

There are a whole host of the players that we have involved here. There were suggestions about chassis to accommodate the overweight containers and no longer make them overweight, but make them heavy. We have about 350,000 of these in the United States right now.

Currently, that I am aware of, there is less than two percent of these chassis that can accommodate overweight loads to make them no longer overweight, but just heavy containers available to the trucking industry by the lines that provide the equipment, so I would suggest to you that that has to be addressed very carefully as a solution.

We get into a situation why the containers are so overweight and yet we have a shipper that will use the same cargo in domestic transportation and not be able to load similar cargo in a container. Why can't we get 12,000 pounds on the front axle? We have unique circumstances in that platforms, the chassis that these containers land on have different dimensions and different kingpin settings which change the whole configuration of the unit.

So if you go to the shipper, and he says, I have been shipping 48,000 or 49,000 every day domestically here from Newark, New Jersey to Los Angeles and I never have an overweight problem. He tries to put the same amount of cargo in the container, doesn't fly, because one, the container chassis are heavier than their domestic counterparts. The axle configurations don't allow the first axle to absorb the primary 12,000 pounds. It only allows 9,500 as our studies have proven and the second and third axles are short, as I indicated before, and the fourth and fifth become the problems.

We have proved these things out, shown them, had many people there. We had Mrs. Bentley attend our most recent weigh-in in Port Newark in 1989.

Unfortunately, or fortunately, for the Port of Baltimore, our weigh-in had a tremendous rain storm that day and she was totally taken aback by the fact that longshoremen worked in Port Elizabeth, New Jersey, in the rain and now I understand they work in the rain in Baltimore and they advertise it.

But there are unique things by having people aware of what is being done and being on the front line. I like to believe that we are on the front line and doing what we feel has to be done to make things happen for the benefit of the truckmen that are involved that get stuck with the short end of the stick.

We also heard that there is a utopian operation where containers come off the vessel, get put on flat cars, are sent somewhere inland and then we have a 20 footer of soy sauce that has to be delivered to Funky's Grocery, and he has a railroad siding on the side of his store. There is one common denominator that the containers have—they have to move by truck somewhere. If it is unloaded in Oakland and Oakland has a five-mile area where they can put these heavy containers in—it gets to Chicago. It doesn't fly off the train. It doesn't get any lighter in the transit time. That is a big misnomer.

That activity doesn't take place unless it is being discharged in Port Newark and going to Montreal and we let the Canadians worry about it. Or if it comes to Los Angeles and we send it to Mexico by rail, send it COFC and let them worry about it. Then you have some quantitative numbers.

But there is a common denominator. The truck has to move it at one point and it doesn't get any lighter here or there, and the only States that allow the permitting of this equipment contrary to manufacturers' standards, because all of them suggest that you can get up to 40,000 pounds on a set of axles, 39,000 is the absolute maximum that the tires that are generically used on these chassis can adequately and safely handle.

When you are also getting into these overweight permits where they exceed 80,000 to 100,000 pounds and using five axles, you are straining the stopping capability of these units. You don't even have to be a engineer to figure out if there is 80,000 pounds and there is five stopping points, that is going to stop in "X" distance. If you have 95,000 or 100,000 and still the same five axles, you can't stop that quickly.

But if you have an extra axles or two or whatever has to be done, there is a chance of making that stopping power a lot greater.

I would also like to indicate that I am a member of that task force that the NHTSA has referred to before and we are striving to work to some sort of agreement. However, it is my opinion, and the opinion of my State, that the only way that I think this can be solved, and this is where we don't necessarily agree, is I think legislation is absolutely mandatory and the reason I am suggesting legislation is because of the divisibility issue.

That issue will be utilized by States in order to emphasize and enhance their position in the shipping markets of import-export activity.

Thank you.

Mr. **ANDERSON**. Mr. Bakke, I would have to say you are one of our best witnesses, Mr. Jerry Bakke, past President of Waterfront Rail/Truckers Union of California.

You don't have to tell them why I say you are one of the best.

Mr. **BAKKE**. I want to brag to everybody. I got to the hearings finally.

Thank you for giving me this opportunity this afternoon.

I am going to try to tell you a little bit what happens to the guy that drives this truck, some of the benefits that we get to see.

We have heard today, and will hear tomorrow, about all the factors that is going to be related to benefits why the Federal Government should be involved. Unfortunately, if you are at the bottom end of this game, you would understand that the Federal Government has lifted this control that we once had, we once enjoyed as owner-operators, individual owners of trucks, small businessmen. We once enjoyed survival without the harassment of being ticketed constantly.

You can't blame police officers for ticketing us. it is their job. Otherwise, we wouldn't be here today.

This is not a fight with the police officers. The fight is we have a lot of Fortune 500s that want more for their pocket and to heck with everybody else.

We represent approximately 1,100 men and women. WRTU members are primarily owners of one truck, one driver—we call them a lessor truck driver.

They are not a common carrier, not the guys that are in competition with common carriers. They don't have valid operating authorities and they don't do for-hire work.

They lease their trucks out to the companies. They basically are an organization, a group of guys that are home every night. They do land bridge and local hauling.

The lessor truck drivers work for common carriers that have signed contracts with the steamship companies. Lessor drivers sign only an Equipment Interchange Release. The EIR is not the signed agreement that is signed between the steamship companies and the common carriers, however, without the signed contract, the lessor driver cannot receive the equipment.

Currently, it is the common carrier and lessor truck driver who directly bear the financial burden of overweight containers whereby they are the ones paying citations, incurring increased insurance premiums from resulting accidents, transloading shipments to become legal on the roads, and paying for permits to legally move overweight containers.

The lessor truck driver does not and cannot control the weight of cargo containers inbound or outbound, because they are not allowed to break a custom seal on any port container without custom or port authority.

The lessor truck driver does not have verification of cargo container weight when picking up containers; and drivers only have paperwork which is not always accurate.

It is the WRTU's position that the shipper or consignee should directly bear the financial responsibility of the overweight containers.

It is my understanding that the purpose of this hearing is to take a look at import and export overweight containers; the road damage and safety effects resulting from overweight containers.

Whatever administrative or legislative action is taken must be on a national level. This would allow all parties involved in any transaction to be competitive within the USA, i.e., ports, shippers, consignees, freight forwarders, common carriers, and steamship lines.

By enacting a national policy, all parties involved in trade would be operating within the same set of guidelines and, thereby, be competitive within the USA.

Now, to address the specific items mentioned in the June 8, 1990, letter from Congressmen Glenn M. Anderson and Bob McEwen.

The petitions denied by the FMC: it is the WRTU consensus of opinion that the Federal Maritime Commission should have set responsible conditions or accepted the responsibility of regulating overweight cargo containers in the USA. However, the FMC elected not to regulate overweight containers when they denied Petitions 03-89 and 04-89 regarding the amount of cargo weight per container and per cargo container rates.

At one time I was a freight forwarder. I have been in this business for 19 years. A freight forwarder has the direct license controlled which is issued by the Federal Maritime Commission. This license gave me the jurisdiction to work with the shipper.

The shipper, when he tells the freight forwarder how and what to put in the cargo container is loaded accordingly and the freight forwarder puts the seal on. He may not put it on directly, but it is put on his paperwork.

He sees to all the paperwork, the bill of lading, the labeling, it is that freight forward's responsibility to see to it that it is done. He is under a $30,000 bond, and I believe that is the same amount today.

This man can take and put the weight limits on, control it at whatever he wants to with the man that is telling him how to load it so I believe at this point it still falls under the Federal Maritime Commission's control for that very reason.

The following are some of the factors contributing to the overweight container problem:

The diversion of funds—reducing road repairs; safety—lack of federally enforced guidelines; deregulation; and human rights.

One of the major causes for deterioration of road conditions is due to the increasing tendency, one, to allow cargo containers to be loaded over the designated weights of our highways, and, two, lessor truck drivers are paid to go around scales with overload and unsafe equipment.

There has been an increase in gas and fuel taxes designated to repair or improve highways in California, however, these taxes have been diverted from their initial purpose.

In addition, the shippers authorizing these overweight containers have not been paying their fair share of these fines.

At the December 4, 1985, Oakland, California, "Assembly Transportation Committee Hearings on Overweight Truck Cargo Container", page four stated: "Ten trucks ten percent over the legal limit cause the same damages as 15 legally loaded trucks or 90,000 full-size automobiles or 654,000 compact cars. Increases in allowable weight limits and other factors demonstrate the tremendous adverse effect overweight trucks have on California highways."

On page 31 of the same hearings, California Highway Patrol Captain Dwight O. Helmick stated:

"When using mobile roving enforcement units, they get a clear one-third of the trucks they stop, on the highways, 36 percent are overloaded, but in the port areas, whether it be Los Angeles, San Diego or Oakland, it jumps to 72 percent."

WRTU feels that highway deterioration resulting from overweight cargo containers should be a major part of the reasoning to enact new administrative or legislative rules.

The desirable position would be the lessor truck driver be recognized by the National Labor Relations Board. There is evidence that the lessor driver is under control by other factors of business.

Attached is a Federal employment tax determination. It spells out their findings as to what is the Federal Insurance Contribution Act and for collection of income tax at source on wages.

Assuring safety in our work place and on our nation's highways should be our top priority. Safety saves lives and prevents injuries and accidents which also improves productivity. We cannot only look at drivers, vehicle and highway safety programs, but we must also include all levels of responsible parties involved when it comes to import and export overweight cargo containers.

In January 1990, police officers targeted violators traveling in the Los Angeles port area and cited traffic violations, including: One truck impounded due to an overweight of 27,000; one leaking container of ethyl alcohol, highly combustible whiskey; one container of 30,000 pounds of poison with incomplete papers; unsafe brakes; bad tires; lights out of order; exhaust; speed.

Example: In April 1989, Michael Gomez of Montebello, California, was killed while forced to sit in his tractor cab as a container fell onto his tractor. Matson Navigation officials said he was in a hard hat area and, therefore, could not get out of his tractor. Matson failed to tell the news media: they were using "J" hooks that were outdated in the early 1970s; the container was one that was to be inspected every six months and had not been inspected since 1982; the accident happened because the "J" hooks pushed the container apart, resulting in the container being released and falling.

WRTU believes a solution to this problem lies in strong Federal leadership and uniform guidelines for all levels of business, including the Fortune 500. The safety legislation of the 1980s has been removed from the Fortune 500 and only applied to the small business or labor person of this nation.

Truck deregulation has allowed the Interstate Commerce Commission to remove itself legislatively accountable and abdicating its responsibility and sacrificing public lives. It has placed at risk the public's lives, robbed employees of jobs, increased bankruptcies, dissipated private capital, lessened consumer choices, and decreased consumer protection. It has placed at risk the infrastructure of highways and placed a risk on the public's lives.

Since deregulation, the Fortune 500 has been given the opportunity and sword to exercise market dominance at the expense of the public safety and small business. Deregulation strategy of most shippers is pointed toward market dominance. Market dominance is characterized by conflict and rivalry. A primary objective is to enhance your bargaining leverage at all other's expense so as to dictate terms of the shipping relationship.

Shipper's action since deregulation has been to enlarge their economic clout. That is why the Fortune 500 are principally promoting deregulation.

At the same time, the Fortune 500 have cut the rates in half for truckloads, they have still increased consumer prices. What antitrust law or economic venture does the public enjoy here?

None. When everything is deregulated, the shippers no longer have to worry about the cost of justified rates. it is what they can force their carriers to haul.

The carrier must, one, try to make up the difference for hauling at a higher price for someone who has less clout or, two, use a lessor truck driver and cuts its piece work pay to the lessor driver to make up the difference. These large organizations of shippers demonstrate a desire to remove themselves from third party liability, compensatory cost review and, basically, no safety review.

Without union control that was put in place at the turn of the century to give employees the benefit to say "no" to unsafe working conditions, we have created human rights violations right here in the United States.

How can we make a lessor truck driver responsible for something he cannot correct himself? Our legislators have not been able to correct it.

When our legislators cannot stand up against big businesses, then something is drastically wrong. Human rights violations are right here in America—every day.

Our President has cried about human rights in foreign countries, but he does not cry for the human rights violations caused by our big businesses right here in America.

For example, Sergio Garcia rakes leaves in the Wilmington, California, parks—125 hours—to work off overweight tickets he received. Our own news media plays down this type of human rights violation. What is the difference if Sergio Garcia was back in his home country of Cuba? They keep it a secret there, too.

The illegal immigrants that come into our country and are now working in our port areas show the failure of our legislators to see to it that our laws are enforced. Our jobs have been truly exported right here in America. This failure of policies which further erode the nation's industrial and manufacturing base shows a large depletion in our tax structure.

Whatever solution is enacted upon, it should be on a national basis so all ports, lessor truck drivers, common carriers, shippers, consignees, freight forwarders, and steamship lines are competing on the same basis.

The solution should increase the safety of the people and property on the highways.

To elaborate on a few of the above proposals:

The City of Los Angeles, with public financing, is providing employment services for day laborers. These are open-air street-side locations where individuals seeking day labor may congregate, be served coffee and refreshments, have the use of toilets and other amenities, while waiting for someone to drive by and hire them. One such site is located at Harbor Region Park in the Wilmington/Harbor City area.

As past President of a labor organization of truck drivers, I have been working hard for many years to keep undocumented, unlicensed, uninsured drivers off our streets. This program will most certainly have a harmful affect on the progress we have made, since it will now be that much easier to hire someone to drive trucks with no questions asked.

This program has put labor of illegal aliens in competition with American workers. The illegal alien has no reason to respect our laws, has no financial responsibility, no reason to work for the same wages as American residents. The illegal alien is hired to do the jobs Americans refuse to do because of illegal aspects associated with those particular jobs.

The steamship lines should not accept overweight cargo containers unless they have on-dock container freight stations available. If CFS on-dock facilities are not available, the steamship lines should not accept the overweight cargo containers from shippers in other countries.

The steamship lines will not accept cargo containers that are not legal in other countries, i.e., high cube 40 foot containers will not be accepted by the steamship lines for shipment to Kobe, Japan. Therefore, the precedence has been established by the steamship lines to honor the surface transportation requirements of other countries.

Government policy needs to be revamped so that there is an increased cooperation among the Federal departments, administration, and agencies responsible for transportation activities, as well as with their State and local counterparts.

Thank you very much and I will be glad to answer any questions.

Mr. ANDERSON. Mr. Bakke, in your testimony, you refer to the paperwork that the driver receives on the container weight as not always accurate. Will a driver know the destiny of the commodity or whether the box is loaded more heavily on one end?

Mr. BAKKE. The problem is when you are dispatched to the harbor and you are told to go down and get a container load of radios, and you will know that this might be equipment, electronic equipment, you go down there and the possibility is they will tell you that there is going to be 22 kilograms in the container.

You convert it over and you come up with somewhere around 44,000 pounds. Well, you got to have some kind of a mathematics behind the steering wheel.

Most drivers don't understand that, nor do I. The girls that type the paperwork out, they will write on the paperwork that it has 25 kilograms in the container when, in essence, she meant 52,000 pounds. That is our problem.

The driver really doesn't have any idea what is in those containers.

Mr. **Anderson**. We better go vote. That was the second bell for that vote. We will hopefully get there, vote and be right back. We will have a quick recess, hopefully ten or fifteen minutes.

[Recess.]

Mr. **Anderson**. The meeting will come to order.

Congressman Borski asked to have a question presented. This will be to any one of the witnesses, Mr. O'Connell, or any of the panel that wishes to reply.

He says, I am interested in the safety aspects related to nighttime visibility of containers being carried by trucks over our nation's highways. We know trucks are lighted at night. He goes on to say, are all containers lighted at night and, if not, wouldn't some form of nighttime visibility be advisable?

Do you want to comment on that before I ask the second part?

Mr. **O'Connell**. Containers are, of course, traveling on the highways and are required to meet minimum lighting standards. That is not an issue.

The lights on container chassis frequently are inoperative, broken, and the clearance lights are not working properly. On the chassis there are problems with brakes lights, et cetera, as I mentioned in the testimony.

There is an over truck sasfety issue known as rear end involving the brightness of the rear end of a vehicle to the person behind it. My experience with containers is that they are not as well marked with reflectors, reflective tape, et cetera, as the trucks that operate on the highways and oftentimes don't have things like the shiny doors that give you a real bright image in front of you.

Mr. **Anderson**. Are all the containers, though, lighted at night?

Mr. **O'Connell**. Yes.

Mr. **Anderson**. Do containers have reflective markings in order that the traveling American public can identify the size and shape of the vehicle quickly at night in the rain and during poor visibility due to other causes?

Mr. **O'Connell**. They are marked.

Mr. **Anderson**. He said "reflective markings".

Mr. **O'Connell**. I would give you a general response and defer to Jerry for the more specific. The general response would be that the markings on them are less conspicuous generally than they are on trucks but that they meet minimum standards, which is all that they have to meet.

The question would be whether those standards are adequate. Most trucking companies, for safety reasons and because of the requirements of their insurance carriers, go well beyond the minimums and enhance the rear end's visibility of the truck. Some companies have a lot of rearend accidents.

Mr. **Bakke**. They have to have reflectives to get in and out of the terminals. Reflectors can break easily. These chassis are used over and over backing up against docks and that is what breaks the plastic type reflectors that are on them.

I think what the Congressman is asking on the clearance lights is on the regular trailers, clearance lights are on top of the container. On chassis, they are not, they are only at a bar level four feet off the ground.

On the sides of a chassis, lights are put on the frame two-and-a-half feet in from the side of the box and I think that is also what he is talking about.

At nighttime, a car alongside a container cannot see the clearance lights while passing. A car would have total night blindness unable to see the containers side when passing. A chassis to be on the road has to have a set amount of lights, your stoplight and clearance light on the back and side and then you have your two-inch reflector, in some States, it is one-inch on the offside.

Mr. ANDERSON. Mr. Adamski, in your testimony you referred to overweight containers—that is an import problem.

We have heard that on the West Coast—more exports are overweight. What is your experience with the containers exported out of the New York, New Jersey area?

Mr. ADAMSKI. We have a serious problem on export level, also. Port of New York is somewhat unique, uniqueness, in that it has a tremendous amount of scrap paper that gets exported in containers from the Port of New York, and without—I guess, stretching the percentage, I would have to say that probably 95 percent of the containers moving through the Port of New York on an export level, scrap papers, are overloaded.

They are 55,000, on average, and the reason being is that they need that tonnage in order to make the economic benefit of shipping them in the container, give them the yield that they want.

But that is a normal procedure and it is unique, also, to the Port of New York, in that the Port of New York, with all intents and purposes with its container activity is located in New Jersey, and New Jersey does not issue penalties for overweight containers.

They consider the containers divisible, so what you have is an activity that is going on, that obviously shouldn't be going on. But that is a normal way of doing business, and it was recommended on what may be a cure to stop that from happening.

Well, we have come up with suggestions that it might be in the best interest of those that are participating in this activity to straighten their activities out and issue summons after the fact.

Now, it is unique in that we weight export loads.

When we are coming in with an export load through the pier, that while unit gets weighted. We don't weight them on an import level, we weight them on the export level, and that obviously has the concerns of OSHA requirements and lifting capacities of the crane.

From the studies we have made today it is absolutely apparent that anything that exceeds 80,000 pounds, theoretically 77,500, a 40 unit, that is where you have scrape paper loaded on 40-foot units. Everything in excess of that would be over on the gross.

If you were to issue summons from the dock receipt and the weight slips, and issue the tickets after the act, or those summons, or those fines after the act, I would say you would correct the overweight procedure on the export procedures real quick. That would be over in nothing flat, because those fines could be as much as $1,000 a crack. And if you weigh that in to your ocean costs, I think you have got it solved.

Mr. ANDERSON. Has there been any effort on the part of the shippers or the truckers, or someone, to get in New York and New Jersey to be the same and not have two different policies?

Mr. ADAMSKI. That is the whole problem. I mean you have either got—let's go up and down the coast and you can see how exacerbating the problem is.

In the State of New York they will allow you 125 percent of the Federal Bridge Formula. You are allowed 80,000 pounds on the Federal Bridge Formula.

The State of New Jersey says from Monday to Friday, you can overload containers to a 100,000 pounds, not to exceed between 20,000 pounds per axle.

State of New Jersey says we don't believe that.

You go down to Delaware, they don't have any particular position on it, nor does Pennsylvania, Maryland issues you permits without any costs, and they go up to 95,000 pounds.

Virginia goes along with anything that originates in the State. Then you get to North Carolina, that responds to what goes on in Virginia. South Carolina responds what is going on in Georgia.

Georgia responds to what is going on in Florida. You have all the eastern states with the exception of Delaware and New Jersey that are heavy with port activity that issue permits that exceeds the Federal standards, but they also exceed in many cases, the permitting standards of the manufacturer of the tires that are carrying these containers up and down the road.

Now, I am sure the Feds came out with a set of rules on a Federal basis that would preclude damaging the highways.

Now, I think it is stretched to think that we are only going to travel on state roads to get to our destination. I think everybody's kidding themselves in that regard. I think this is something that has to be addressed.

Let me give you a horror story, just for what it is worth.

Three containers—this is on an import level, I forgot to mention it before.

Three, 20-foot containers coming in with an aggregate weight of 120,000 pounds from India. They are sewer plate covers. Everybody knows how dense these things are, all right.

The delivery order, the paperwork that we get says the aggregate is 120—1,000 pounds. It doesn't spell out what is in each container. The dispatcher gets the paperwork, sends the truck to the pier.

He goes and looks up to the load, comes up and calls up the dispatcher—this happens to be a member that was involved in this particular circumstance—and he moves this cargo on a regular basis. Calls up the dispatcher.

He says, gees, there is something wrong with the tractor, because it is not pulling properly. We figure 3 into 120 is 40,000 pounds. Theoretically, it is overweight, but it is overweight.

He says it doesn't seem right. He says, a new tractor, maybe something is wrong with the fuel filter. We will bring it to White or Mack, or however it was.

Anyway, he calls back up, there is something really wrong with the tractor.

He says, do me a favor, run over the scales. He runs it over the scales in South Kearney. The truckstop only has a 100,000 pound capacity on this scale.

He lights the light. He couldn't weight it because it was in excess of 100,000 pounds. They finally end up unhooking the unit, leaving the container on the scale.

The container has 80,000 pounds in that particular container, and there were 20 and 20 divided into the other two. He went on the road and brought their unit back. But this is how absurd the rules are.

If you can weight it on a weigh-in, why can't you weight it on a weight-out? The scale doesn't know if it is coming in or out, nor does it much care if the thing is coming in or out.

Mr. ANDERSON. These were three containers, relatively the same size, one had 20,000 and the other had 80,000.

Mr. ADAMSKI. One had 80,000, the other had 20 and 20. The fellow in India, they loaded it. The crane had no problem lifting it because that thing can lift 40 long tons.

There was nothing to stop that crane, bring it down the unit, is landed on a chassis, they bring it over. Maybe the brakes are dragging.

Meanwhile, this fellow goes down the road, he grosses 100,000 pounds. The assumption is he only has 40,000 pounds.

He goes to stop in what he thinks may or may not be the precise distance he needs to bring this to a halt. He can't do it, because, obviously, the inertia is going to force the truck to continue going that way. That is the absurdity about it.

Everybody is talking about simplistic situations. You have got a crane that can lift this unit. If that governor is set up to segregate what might be excessive when the crane is lifting, you have weigh-in motion scales because we get caught by these weigh-in motions where the unit would drive over the scale, and if it is designated as being an overweight unit he pulls over to the side, and a determination will be made at that point whether or not the load is house-to-house, or pier-to-pier.

If it is house-to-house, that means it has to be stripped and made available on a domestic move. If it is a pier-to-pier—let me explain to you what house-to-house is.

House-to-house means we ship the load from Paris, France, to Homedale, New Jersey, house-to-house.

The container has to adhere to whatever rules they have in Paris and whatever rules we have in Homedale. Now we would expect he is going to adhere to all the realistic loading capabilities of the roads he is going to utilize. If it is designated pier-to-pier, he can load 65,000 in it.

We don't much care, because it is going to come from Paris, landed on the dock, and it is going to be landed on the dock. It is going to be stripped and maybe put into two trailers, the way it should be.

In the event the load comes in, it is house-to-house, and it is overweight, it is no longer house-to-house. It becomes a house-to-pier movement, and you have to designate an area where you can make it legal.

This is simplistic and solvable. You have a situation that is immediately directed and focused in on what the problem will be, because now you have excessive charges.

If those excessive charges queer the load and the capability of that person to make a profit, I assure you the next time he comes around it will be house-to-house in the appropriate format. It is as simple as that.

Everybody has a problem. I have heard nobody volunteer the whole Department of State, the whole day, nobody volunteered that we can solve it. Simplistic? I can't, unfortunately two and two is still four.

I know one and a third and one and two thirds make four, but you can do it, but you have to take the approach and ability to do it.

Where is the check point? The pier is the check point. Every load and every export has a common denominator of going through the pier. The pier has to be the the point it is focused on.

You don't have the ability with your enforcement agencies to sit down and weight every container. You have a million coming into the Port of New York now, we are behind Los Angeles.

They go rail or whichever way you want but they have got to travel by road at one point in time. It can be solved; it is not a major problem.

Mr. ANDERSON. Is this something—a solution we need legislation for or something that can be done by the people in that general area?

Mr. ADAMSKI. Absolutely, because it has to be a level playing field. If we don't have legislation that says every container that comes into the United States has to adhere to the Federal Bridge Formula you will have Rhode Island responding to whatever problems Rhode Island's problems are in order to make that economy better.

I am just picking on Rhode Island, not for any specific reason. You may have South Dakota not much care.

What is happening now? We have inland ports. Atlanta, big turning point for the stack trains. Chicago is an inland point. Columbus is an inland point.

We take the units off the pier, Los Angeles it comes out, double stack train all the way out to Chicago, Columbus, Atlanta, wherever the case may be.

It is not landed on a chassis. That inland area becomes a port. That thing didn't get any lighter when it left Los Angeles, it still had to be moved by truck in some manner. If you can stop it at the port, which is the common denominator before it gets inland, you know you have got it solved.

If everybody has the same set of rules to adhere to, sure as God made apples, if there is an inland port in Ohio, you know eventually whatever the shipper is, there will be supposedly economic benefits without really realizing what the economic destruction of the roads are to make that happen and increase the weights for containers.

Let's talk about the tomato thing that I have got in my prepared statement.

New Jersey, everybody knows good tomatoes are grown in New Jersey, great. We have got 1,200 cases of tomatoes in a 20-footer. Let's say we had a permit that allowed an overweight 20-footer travel through New Jersey, which we don't, but we have Campbell Soup there.

Campbell Soup wants to use New Jersey tomatoes. Local farmers can't put all those into a container, but if he had an import tomato coming from Italy, he could do that. What is the difference.

The tomato doesn't know if it is overweight, who packed it knows whether it is overweight. Is it intentional? Of course, it is.

Mr. ANDERSON. Well, the solution is legislation?

Mr. ADAMSKI. Absolutely.

Mr. ANDERSON. What is our next one here?

I believe this is to Mr. O'Connell.

You testified, Mr. O'Connell, to the effect that if a driver refuses to pull an overweight load or one with a safety defect, he or she must return to the end of the line to wait perhaps as much as two hours for another load.

Now, how widespread is this practice? Is this the case nationwide?

Mr. O'CONNELL. The reports we have gotten from OOIDA members indicate that is a fairly widespread practice throughout the country. The association members on both coasts and in almost all port areas talk about this problem. The association has been active with the National Motor Advisory Committee on this issue for a couple of years.

That I might add, is not an uncommon practice in the trucking industry, generally. If a trucker objects to a truck—and the driver is not covered under a labor contract—he or she is normally fired.

If an owner-operator comes does something the carrier finds objectionable or, for example, objects to exceeding hours of service, then that driver is usually put on a no load list, as well.

"No load lists" are fairly common in the industry.

Mr. ANDERSON. How wide is the practice, and is the case nationwide?

Mr. O'CONNELL. My sense is it is nationwide, and that the practice is fairly widespread.

I might add that the economics of the industry somewhat argue against the driver objecting to a piece of equipment. A driver that has been in line for two hours takes what he or she can get. Could I say it happens 10 percent of the time or 5 percent of the time? Probably not, because the driver who sat there for two hours knows well what the unwritten rules are.

When he goes to pick up the chassis he knows what is going to happen if he says there is a problem with the brakes on this one. He knows he is going to go back to the line or be told to take it over to get it fixed. In either case you sit in line and you are not compensated.

In the worse case, he is not going to get loaded at all. Most of the time the drivers have to make the truck payments, feed their family, so they accept the truck and take off.

Mr. ANDERSON. Any comments from you, Mr. Bakke?

Mr. BAKKE. I can address for San Francisco, Los Angeles, and for the Houston area.

We have members in all three ports. Right now, in all three ports, the practice is that the piece of equipment today has to go on the highway the way you want to return it back in.

If you have a dent in the bumper, chassis bumper, and you get to the gate and that—just explain to you what a bumper is.

On a chassis a piece of iron about three and a half feet long, and it is basically something you can step on to open up the container doors. And they have little lips on each side, about three inches wide, for you can stand on.

If one of those are bent up you can drive out and deliver the cargo and come back and have it written up and replace your wallet with the repair.

If you want to pay a trucker zero, that is what he takes home. If you want to pay him minimum wage, $3.35, I know they don't want to pay us $4.35 an hour. They use it as a penalty force.

If you take a trailer out and the tires are not checked, they will—and have what is required by law at three—what is it—three-tenths—it is a three margin—two thirty-seconds.

Anyway, if it goes out and you come back with less, they will take and charge you for these things.

Now, it is your choice to have it repaired before. Like Mr. O'Connell said, yes, your choice is take this chassis out and go to the end of the line and start all over.

Now, if you want to know how lines work in the harbor, first off your line starts by getting in to the harbor. That is the first line. That can take anywhere from half an hour to two and a half hours.

Once you get inside the gate you have to get your truck inside the yard. Once you get inside, you then drive over to what is a specific window.

The specific window is one set that will handle your paperwork. You now process all your customs and bill of lading and everything with the girl in the office. She is now going to I.D. you. This will take half hour to 45 minutes per driver. Some say they are real fast—I haven't seen them yet.

The next point, you go back out to the yard and find your chassis. You have got to have the right chassis with the right piece of equipment you are going to pick up. You are taking another half hour if there is chassis available.

If there is not, you can find one chassis out of some thousand chassis sitting in the yard, but this one chassis you may be looking for maybe a Zim in among five other steamship lines. What you have to do, you go out and get out of your truck and walk down to find yourself a chassis. If you walk a half mile it doesn't matter.

You get back in the truck, you drive down again. Once you get your chassis, if you find the one usable for the highway, you get to go to the next line to have a container put on.

Once you get over to that line to have the container put on, it may take the rest of the day. You can sit there anywhere—depends on how energetic the people are loading the container—maybe a coffee break, because now you are hitting in about lunch time to get a container load out. Once you got your container load out, if you are lucky, before noon, and you have this one little thing that needs to be repaired, you can sit two hours more, they went to lunch, because they will not work between coffee breaks.

And they will not fix a chassis until you get the container put on the chassis. And once you get it put on, then you can get it repaired.

Now, you get this repaired and you get to the gate, and the man will or will not write it up. The problem in our case is if you are a Gringo, it is called in Los Angeles, you get the chance to get it written up.

If you speak a foreign language, you won't get it written up and you will have a big major catastrophe. Even if you are a Gringo, you get to it and wait for these guys. But they will be the ones directed around and go back to the end of the line.

I am saying this is the most sickening thing, I as a person—and I hate to see discrimination in anything, but we have more damn discrimination going on in our industry today, just because of the illegal situation.

If our government could only come up with a program and work out the same kind of program we have in Canada, we could work the same one with Mexico. If these guys are going to come here, and our Federal Government can't stop them, the illegals that come in this country should be documented. I don't care if they work in the port or not—the bottom line is let us all be treated the same.

We wouldn't have these damn lines. We could get in and out of these ports, that is where I have been talking about bringing in the union concept. Regulation, give us a voice to back, as laboring men that we can stand up to our employers.

If that load is illegal for the highway, give us the opportunity to say, no, I don't want it. Don't let the next guy come along, say, I don't speak English, and I take it.

What is the most they can do? Deport them back, stand them in the sun and get a little more tan? While they and U.S. customs are coming back to Los Angeles, he has caught the jet, and is back running a truck again.

It is stupid. It takes a whole day to get a container out. It is silly.

Mr. ADAMSKI. Excuse me, Mr. Chairman, we have a different situation in New York. We get paid.

Mr. ANDERSON. You what?

Mr. ADAMSKI. We get paid.

Mr. ANDERSON. You do get paid?

Mr. ADAMSKI. We do get paid. After two hours, we get paid. It is part of the New York Terminal Conference and part of the Federal Maritime Commission, Item 35, if I remember right.

After two hours, we go in line, we get paid $8 per 15-minute increments, and that has got to be documented. Obviously, you are not going to make a lot of money on it, but we do get paid. That is only in New York.

Mr. ANDERSON. Mr. O'Connell, you testified about the "scale fees" to compensate for circumventing non-scale locations. Can you elaborate on this practice?

Does it exist in all port areas, and is this kind of what Mr. Adamski is referring to? Would that be called scale fee?

Mr. O'CONNELL. You mean for sitting in line?

Mr. ADAMSKI. We are sitting in line trying to get the container.

Mr. ANDERSON. Without what the scale fee is?

Mr. **O'Connell.** A "scale fee" is generally paid by a steamship line or the forwarder, or whoever is responsible for assuring that that load gets to its final destination. It is simply a fee paid for the driver for the inconvenience of going around the permanent scale. The temporary scales set up on the highways are hard to avoid.

That is how tickets like one I attached to our exhibits occur. Drivers know the locations of permanent scales, and it takes a little longer if you are willing to route yourself around them.

The driver is compensated a little extra to go around that scale.

Mr. **Anderson.** Does this exist in all areas.

Mr. **O'Connell.** My understanding it exists in most, yes.

Mr. **Adamski.** Maybe there is a misunderstanding, if we are going to pick up the unit at the pier and we spend four hours to pick up a unit, we get paid everything in excess of two hours from the terminal operator, at $8 per quarter.

But as far as it being an overweight load and told to drive around the scale, that is—those are—those are rules that I would say probably are set up by each independent company on their own.

I know it exists, I would be naive to think it doesn't exist. I don't participate in it.

Mr. **O'Connell.** I would like to clarify that. What Mr. Adamski has described, I think, what is called " detention time" it is actually in the tariff.

Scale fees are illegal. They are side payments made to owner-operators as essentially payoffs for providing the extra service.

It is not something that is contractual, it is very rare when they are even listed on the settlement sheets. The reason we provided those, they were listed that way and they were examples we thought that the committee would find interesting.

What Mr. Adamski is talking about is part of the tariff.

Mr. **Anderson.** Mr. Bakke.

Mr. **Bakke.** I think this is the same thing 1987 WRTU filed with Federal Maritime Commission to have the same kind of tariff in New Jersey, New Jersey imposed in Los Angeles, Long Beach area, too. I think that waiting time, because of the excessive waiting delay, we are creating on the lesser drivers.

Mr. **Anderson.** What do you think we should be doing about this problem or situation?

Mr. **Bakke.** I think first off we need to get our Congressmen all to sit down right away and take, and lift and band, if we can't do anything else, take the problem off the truck company and the truck driver immediately on this overweight, and if there is going to be a ticket, bring it back here to the Congressmen and let them submit it back to the company that put this overload on the road in the first place, and let them collect the fine, until we come up with a solution.

Right now we have men racking leaves, bearing these overweights as we are talking, and nobody has stopped them yet.

Believe you me, when you talk about this overweight ticket that Sergio Garcia got, Sergio got this ticket because he went back the second time.

His company—this is the thing they do. If you go stand four hours down in a terminal to get this container out and you get half mile outside the terminal and get red tagged, and you are forced to drop this thing on the street, what Sergio didn't understand was the difference between highway patrol and port authorities.

And, of course, we have the DOT now in the port—in the harbor area. And, of course, they are the ones that manipulated and happened to catch Sergio when he went back later that afternoon. That was the only way he could get revenue for that load.

It has to start here at the Federal level. We have to take and get the Federal people to stop this kind of abuse on the human rights of working men.

Mr. ANDERSON. How common is it to our companies to reimburse the drivers for overweight fines?

Mr. BAKKE. It isn't just reimbursing the drivers for overweight fine. When they get the fine they make the driver fully responsible for it and he is the one that is taken into court, and he has to go to court and say it was my boss' fault, and the boss says, no, it was the shippers' fault. It is kind of like a game.

When the driver goes to court, guess what, he took a day off to go to court. Now the guys down to a four-day week working for $120.

At least we got guys trying to work instead of becoming homeless and on welfare. The situation is we are creating these guys to quit working. We are better to go on welfare.

Mr. O'CONNELL. Mr. Chairman.

Mr. MCEWEN. Thank you, Mr. Chairman.

Thank you all for your testimony.

Mr. Adamski, are all the parties to a container movement the shipper, ocean carrier, the terminal operation, the trucker who is in the best position to know when a particular container when joined with a particular tractor and chassis would meet the applicable weight laws?

Mr. ADAMSKI. The terminal operator. The reason for that would be specifically in New York—I will comment about New York. There are chassis pools being employed by certain terminal operators or majority of terminal operators where they will know what the weight of the unit is, what the pool availability of the equipment is when there are 23-foot chassis available, 27 chassis available.

The tractor doesn't come into play anymore. This is a big misnomer that the tractor has a great deal to do with it. It does for the outer bridge, but for all intents and purposes that only plays out in Florida.

The tractor, the first axle and second and third axle, in most cases are not the violators of any overweight problems. The problem is with the chassis that is being presented to the truck men with the box for delivery.

So, the terminal operator is the player that knows what the weight is. He is the guy that is the common denominator.

He is the fellow that fortunately, unfortunately has to handle and deliver the cargo.

Mr. MCEWEN. Your testimony sounds like the way I started out this morning. It didn't seem overly complicated. It seems to me this ought to be able to be done. Are we missing something?

Mr. ADAMSKI. No, it is not.

You know I can understand the bureaucracy, and I can see the bureaucracy, but obviously, but this is a bureaucracy but you have got a bigger bureaucracy in companies that I am looking at.

What you have is container presented for delivery. It is either right or wrong, there is no gray area.

We are looking to believe—we are also being made to believe that some of the traffic managers that control this cargo doesn't know what they are shipping.

Mr. **Adamski**. I got a problem with that. I don't believe that you don't know what you are shipping and whether it is legal or not.

I bet they all know exactly what they are shipping.

Mr. **McEwen**. Thank you.

Mr. **Anderson**. Thank you all very much.

[Mr. O'Connell's statement appears on p. 136.]

[Mr. Adamski's statement appears on p. 81.]

[Mr. Bakke's statement appears on p. 84.]

Mr. **Anderson**. We have our last witness today who is here one day early to help us with our tight schedule on Thursday.

He is Mr. Thomas C. Wilcox, Executive Director and General Counsel of the National Association of Stevedores.

Mr. Wilcox, would you come up?

[Witness sworn.]

Mr. **Anderson**. You may be seated, and you may begin.

## TESTIMONY OF THOMAS D. WILCOX, EXECUTIVE DIRECTOR AND GENERAL COUNSEL, NATIONAL ASSOCIATION OF STEVEDORES

Mr. **Wilcox**. Mr. Chairman, it has been a long day, so I will skip most of my testimony which will be included in the record, I am sure. I don't know whether I now represent the National Association of Stevedores or the National Association of Chockpoint operators, but the member companies of the National Association of Stevedores, as you know, are the private marine terminal operators or stevedoring companies in all the major ports of the United States.

I appear here today on behalf of the terminal operator members of our group, which includes practically all of them. Some are carrier owned, some are independently operated as terminals but don't do stevedoring; some do stevedoring but not terminal operations and some do both.

In response to your four questions, we believe that the Maritime Commission was correct in denying the petition for the reasons stated on our statement.

We listened to Admiral Carey this morning, and I agree with the testimony that the solution to the problem is not within the jurisdiction of the Federal Maritime Commission. As to the Federal Highway Administration's report, based on the PIERS data referred to earlier, I think the Federal Highway Administration report in itself acknowledges its own deficiencies when it stated that, based on the PIERS manifest data which they had, they identified a quantity of containers which potentially could, when combined with a tractor and a chassis and entered on a U.S. highway, might violate the Federal Highway laws.

The Highway Administration goes on to point out, however, that their study really doesn't tell them anything and the actual problem can't be estimated until there is data about how those "potentially" problem containers move over the land, either by road or by rail.

This morning we heard the Assistant Secretary of Transportation say something which is rather startling to me. The Department of Transportation, has no quantitative estimate of the damage caused by overweight vehicles, page 3 of the Assistant Secretary's testimony. That is overweight vehicles of all categories. Not having such quantitative data, DOT then correctly states the information gap makes it impossible to precisely estimate the highway damage caused by the subset represented by overweight container carrying trucks.

If the DOT has no data or cannot estimate, one, the damage done by overweight vehicles, which is really the problem, and since they don't have that and they don't have any data as to the damage caused by a subset, a very small subset as I recall the testimony of the Assistant Secretary, then we are addressing a problem to which nobody really knows the scope. We are trying to fashion solutions to a problem without identifying what the problem is that we are trying to correct.

The third question is what is the possible or probable cause of increased utilization of transportation equipment, or as some people phrase it, increase in overweight containers. Well, a container is not overweight until it is actually combined with the chassis and tractor and goes on the road. So an overweight container isn't overweight in the majority of situations.

And I believe all agree that one of the causes of increased utilization of transportation equipment is cost and productivity. In the maritime area—you will hear other maritime witnesses tomorrow—the volume may be up, but the rates are at levels which were probably in effect eight to ten years ago.

So we may be working harder but we are enjoying it less. Costs go up but revenue has not met costs. As the steamship lines revenue is depressed because of their problems, they say you have to reduce your rates because we have to reduce our rates to the shippers. Consequently the entire maritime sector is compelled to get better utilization out of the equipment at hand.

The answer to your fourth question, what possible solution is there, since I am under oath, I don't know. The export situation which most people seem to have tried to duck today accounts for more than half of the alleged problem of which we don't know fully the scope. As to exports, I really don't know what the answer is.

I know that as to the import situation there is, as I found out the day before yesterday, in the Port of Long Beach the California Highway Patrol has started a sample test weighing of imported containers. It is based on their knowledge or the industry's knowledge of suspected heavy containers from a certain area, or are brought in by a certain steamship line over a period of time.

There are no secrets in the terminal or carrier business, and you know pretty well where you can expect the heavy containers.

The program instituted by the California Highway Patrol is to put a portable scale outside the terminal gate, somewhere between the terminal gate and downtown Long Beach, and run the rigs over that portable scale.

If the portable scale indicates that there may be an overweight problem, realizing that a portable scale is not that accurate that you can really pinpoint the bridge axle formula, the California Highway Patrol will tell the driver of that rig to, take it to the accurate scale and we will weight it there. What happens after that, I don't know.

There has been talk about using weight-in-motion scales. The latest documentation I have seen says don't rely on a weigh-in-motion scale because their accuracy is not good enough to determine whether you have a actual bridge axle weight formula violation. It is an indicator that there might be, but if the most sophisticated weigh-in-motion scale is only accurate within 5 to 10 percent that really doesn't tell you much. But it may be sufficient to say let's take it to another scale to have it done.

My final point is that you cannot without totally disrupting the marine terminal and the maritime operations, do an axle bridge weight scale weighing on a marine terminal. Prior witnesses complained about waiting in lines two hours to get on or off a marine terminal. If the industry were compelled to become a police department and to do the weighing and the measuring that is necessary to satisfy the trucker that he is not going to violate any state law wherever he takes that rig, he is going to be waiting eight hours to get on a terminal and probably all night to get off the terminal.

Mr. McEwen had questions earlier about weights and what does the terminal know since the interchange takes place on terminal property. For an export container that is stuffed somewhere in the U.S., it can be packaged by a shipper, a non-vessel operating common carrier, by a freight forwarder, it can be stuffed by a consolidator, or by anybody the shipper wants to stuff it so long as he has a container. When the container arrives at the terminal, it should have with it the documentation necessary for the terminal operator to know, whose container is it, where does it go, for what steamship line is it. If he has a copy of the weight list he will look at it, but he probably won't pay much attention to it because OSHA requires that the container be weighed for safety purposes on the terminal.

The container can be weighed in one of two ways. The standard practice is to put the whole rig on a gross weight scale, deduct the weight of the tractor and deduct the weight of the chassis and that gives you the weight of the container.

If the container weight does not violate the maximum capacity of the crane, you let it go. Usually the clerk will note the actual weight on the piece of paper that is given to him by the trucker. It may or may not be the same as the weight on the piece of paper the trucker gives him.

There are two types of operations, a wheeled operation and a grounded operation. In a wheeled operation, the container will stay on the chassis until it is to be loaded on the ship, and when it goes on the ship the chassis will be pulled to the shore side crane by a yard hustler and then the container will be taken off the chassis and lifted onto the ship.

On a ground operation, after the container and the chassis are weighed, the container will be demounted from the chassis and the chassis and the truck get off the terminal when the ship comes in the terminal operator will transport that container—pick it up and put it on a yard chassis and move it around to the ship.

Sometimes the scale is on a transtainer. That is the equipment that will take the equipment off the chassis, move it, and put it on the ground. Some terminals have the scale there, and that will be in a grounded operation. You couldn't do it on a wheeled operation.

On the import side when the container comes in you assume that since it got on the ship overseas and it got here, the bottom probably didn't fall out of the container. You can't weigh it until you get it off the ship. At the present time there is no scale that we know of that you can put on a container crane that will allow you to weigh the container in the air while the container is moving.

You have a maximum or emergency weight indicator on the crane so that if the container exceeds the safe capacity of the crane, it shuts itself down. You don't rely on the crane operator to say you have a red light, maybe I have to stop the crane. The crane will automatically shut itself down in most cases if there is an overload on the crane.

Then the container gets discharged on to the terminal, put on a yard chassis and pulled to a parking lot on the terminal waiting for the proper documentation or a delivery order which is issued by the steamship line. No container legally gets off a marine terminal—forget about smuggling—no container legally gets off the terminal unless there is a proper delivery order issued.

When the truck driver arrives at the gate to pick up a container, he has to have that delivery order in hand and that delivery order has to have a specific container number, the shipper, the carrier, and the weight.

So in most cases, if a trucker is properly documented by whoever sends him to the terminal, we don't send him to the terminal, the cargo interest does that; the truck driver has the documentation that is required, he is photographed, and the truck may be photographed, and he is told by the terminal, go to slot number so and so on the terminal. If you don't know where it is, we will have somebody show you where it is and go pick up your container.

If it is a wheeled operation, he just backs into the chassis and hooks up. If it is a grounded operation the container may or may or may not be premounted before he gets there. Then the tractor chassis container go through the TIR line where the terminal people will give a visual inspection, a cosmetic or facial inspection, to the container and the chassis. Not the tractor because that is not our responsibility. Under Federal Highway Regulations the truck driver is responsible for his own vehicle, sand he can refuse to take an unsafe chassis and container if tendered to him by the terminal operator.

The clerk then will look at the chassis and the container and note on a piece of paper called the TIR all the defects if any on that chassis or that container. He will give that to the truck driver. The truck driver has to sign it, so he knows what he is taking off the terminal. Then the driver takes the rig to the outbound gate where all the documentation is cleared.

The outbound gate clerk makes sure the seal number on the container matches the seal number on the documentation and the number on the container matches the number on the documentation, and the way he goes.

Mr. ANDERSON. Has the FHWA ever followed up on its April 15, 1988 reply that indicated that there may be merit to the proposal to include the issue of overweight containers in the Section 158 study included in the 1987 highway reauthorization act?

Mr. WILCOX. Mr. Chairman, it is my understanding, and I realize I am under oath, it is my understanding that the way the National Academy of Sciences operates is that if an agency requests them to do something somebody has to give them some money to do it. I understand that there was a funding difficulty between the Maritime Administration and the Federal Highway Administration, and that is, I think, the reason why the study was not included in the study that Congress had directed them to do.

Mr. ANDERSON. What revisions would you suggest for the FHWA PIERS study if that basic approach was to be utilized again?

Mr. WILCOX. I think that the FHWA study indicated there were areas or specific types of cargo which might be overweight. And it really doesn't take a genius to figure out that high density cargo is going to weight more than low density cargo.

I think after having done that, where the study fails is what we really asked the Federal Highway Administration to do in the first place. Now you have identified these types of commodities which are dense and therefore tend to be overweight if the container is loaded to its capacity. Then find out how does that particular group of commodities move over the inland transportation network of the U.S.

If 90 percent goes by rail, then you don't have as big a highway problem as one might think we have. If 90 percent goes by truck historically, then maybe there is another solution to the problem of high density cargo.

Mr. ANDERSON. What portion of overweight containers in the PIERS study would you estimate are inadvertently versus intentionally overloaded? One estimate we have heard is 40 percent intentionally. I was wondering what you are estimated to be.

Mr. WILCOX. I would have to say that most people in the maritime community had up until now absolutely zero knowledge or awareness of the highway bridge axle weight formula and probably none of them intentionally decided to stuff containers to violate Federal highway laws.

Mr. ANDERSON. Foreign commercial seems to be using longer and heavier containers and these will eventually work their way over to the U.S. exacerbating our problem. Have you noticed this trend taking place?

Mr. WILCOX. Not to any large extent. I believe you may find that the originators of the larger containers are the U.S.-based steamship lines, not the overseas ones.

I think the ISO standards of 10, 20, 30, 40 usually prevail.

Mr. ANDERSON. Mr. McEwen.

Mr. MCEWEN. Thank you for your testimony. Do you feel there is any problem on the highways with overweight?

Mr. WILCOX. I am sure there is a problem. I just don't really have any idea of the size of it or as to how much is caused by containers or steel trucks or cement trucks or refuse trucks or any other overweight vehicle.

I think it is a small proportion and it seems to me it is like a proposal to use a sledge hammer to kill a fly.

Mr. McEWEN. OSHA puts in a regulation you have to weigh every container, and what for?

Mr. WILCOX. it is purely safety. The safety of the men. OSHA regulations require two things. One is a weight indicator on all cranes so you don't——

Mr. McEWEN. Just for the use of the crane which is a matter of seconds——

Mr. WILCOX. It is not really a matter of seconds.

Mr. McEWEN. Would it take more than five minutes to lift it up and let it down?

Mr. WILCOX. You get 20 lifts an hour if you are lucky.

Mr. McEWEN. So if they can get a regulation for the few seconds that it is on the crane, certainly if it is going up and down the highway and doing a great deal of damage to the highway system—I am not discussing being able to stop and safety, but just the highway damage, then certainly the weighing of that for that purpose would not be excessive, would it?

Mr. WILCOX. Two problems. If a crane collapses, everybody knows it. If a crane collapses, you may take out 30 men and a ship.

Mr. McEWEN. I have no problem with the crane, I am saying the damage done to the highway ought to be almost as important.

Mr. WILCOX. I have difficulty with the damage done to the highway when the Department of Transportation tells me they don't even know what it is.

Mr. McEWEN. That doesn't have anything to do with me, because I know what it is and every state can tell you what it is. And if some assistant secretary, when I wasn't here this morning, says he doesn't know that doesn't phase me one speck because I can go with a phone call and pick up the highway directors of every state and they will tell you within an hour how much damage they think is done by overweight trucks in their state.

Mr. WILCOX. There is a test program going on by Port of Long Beach that didn't require any legislation whatsoever. The way the California Highway Patrol operation functions is to say, okay, we are going to weigh containers that are suspect on this scale and send you down to the state police run scale. I think you asked earlier today about whether it should be done by private or public, the weighing. There was a GAO report that took a very dim view about the Customs central examine stations being run by private enterprise if Customs didn't fully regulate it.

If the shippers and broker started hollering about the cost for a Customs inspection done by a private contractor, they are going to holler even more if all their containers have to be weighed by a private contractor, stripped if they are overweight or reloaded. It is not only the weighting, it is what do you do with it after you discover it is overweight?

Then you have to get a Customs agent to come down because it is a crime to open the seal unless it is under the supervision of Customs. It is a major problem you run into.

There is more than one agency that gets involved, in moving this stuff.

Mr. McEwen. We ought to do anything at all? Should we be concerned?

Mr. Wilcox. I think if there is a problem, yes, you should care about it.

But I think if what is happening in Long Beach ought to be able to happen in other ports. It is a law enforcement problem and I think the law enforcement agencies should do it. It shouldn't be the burden of private enterprise to fund what is essentially a law enforcement problem.

Mr. McEwen. It shouldn't be a burden to enforce what is a law enforcement problem—I am not sure I follow. The point is we have a problem and we have got to solve it and the question is how do you do it. You are saying do it any way you want, just so long as you don't do it on my property.

Mr. Wilcox. That is about it. If I had to come up with a solution, I would look at that solution. I know it has been talked about in California for quite some time and now apparently the California Highway Department has implemented it at least on a test basis. We ought to watch and see how it works.

On export stuff, I have no idea how you are going to do that.

Mr. McEwen. Well, thank you.

Mr. Anderson. This completes today's hearing. I wanted to just let you know that tomorrow the full Committee on Public Works and Transportation will be meeting in room 2167 at 9:30, and immediately following that meeting we will have a follow-up meeting on our committee at that time which would be anywhere from 11 o'clock until 2 or 3 o'clock.

We will adjourn until that time tomorrow when the full committee finishes and we can continue.

Thank you very much, Mr. Wilcox for your presentation.

[Mr. Wilcox's statement appears on p. 148.]

[Whereupon, at 4:30 p.m., the committee adjourned.]

PREPARED STATEMENTS OF WITNESSES

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# Road Damage and Safety Effects Associated with the Movements of Intermodal Containers by Trucks in Violation of Federal and State Laws

Public Hearings of
Committee on Public Works and Transportation,
U.S. House of Representatives

Presented June 27, 1990,
by New Jersey Motor Truck Association,
Bi-State Harbor Carriers Conference

Edmund Hmieleski,
president

Samuel Cunninghame,
executive director

Tom Adamski,
chairman, Bi-State Harbor Conference

paper prepared by:
Russell Roemmele
assistant executive director

## BACKGROUND

New Jersey Motor Truck Association (NJMTA), founded in 1914, has through its 76-year history represented the interests of truck operators at New Jersey ports.

In 1981, NJMTA was instrumental in stimulating a renewed participation by the state government in the growth and productivity at the pre-eminent "load center" on the East Coast, Port Newark-Port Elizabeth.

At that time, NJMTA formally restructured its representation of truck operators — draymen and intermodal operators — with the founding of a subgroup, NJMTA Bi-State Harbor Carriers Conference: "the voice of truck transport and intermodalism at New Jersey ports."

Primarily, the harbor carriers conference has been increasingly occupied in servicing the legal, legislative, education and technical needs of its members at ports in New Jersey.

## THE MOST PAINFUL HEADACHE

Undoubtedly, the most nagging impediment to safe and productive operations perceived by harbor carriers must be overweight intermodal containers which continue to enter into America through its foreign trade partners. Without question, overweight intermodal containers — and what to do with them — have preoccupied the mind and ingenuities of truck operators at the ports in the state.

As NJMTA has previously testified before the Federal Maritime Commission and has written to other interested parties, overweight intermodal containers are inherently dangerous to inland traffic and a hazard more immediate than the media-induced fear of hazardous materials transport.

This is so because everyone in trucking and in government it seems has understood and reacted to the potential disasters and possible catastrophes in hazardous material transport. But few persons outside those in the everyday business of hauling intermodal containers are aware of the potential consequences when an overweight container is placed on a chassis without regard to axle weight maximum limits and safe loading on the tires.

## FAILURE OF GOVERNMENT RESPONSE

What is so appalling, so unnatural, so disturbing is the inability of government agencies to respond to this obvious illegal practice of overloading intermodal containers at their point of origin and without regard to the axle weight and tire load restrictions on American roads.

In plain English, shippers appear more ready to fill the containers — that is, to "cube out" — before they determine overall container weigh — that, to "weight out" — when sending intermodal containers to America. If anything, as expanding miniaturization of products and, with other technological advances made in the reduction of weight per product, the tendency or temptation for shippers to "cube out" supercedes commonsense approaches in maintaining safe and legal weight limits in loading containers.

Thus, more and more overweight containers are finding their ways to American ports and are being hauled illegally on American roads. Despite efforts of NJMTA and the harbor carriers conference, we are sorry to report that overweight containers are an escalating burden that can no longer be carried.

## TRUCK OPERATORS, THE SCAPEGOATS

Moreover, as if characters in "Catch 22," when found by law enforcement agencies to be carrying overweight containers truck operators are held solely and totally responsible for penalties for violations of gross vehicle, axle weight and specific tire load limitations.

Accidents have occurred because of blown tires and broken axles on the roadways. How many accidents have been caused and fatalities inflicted because of overweight containers can only be presumed. But, as these overweight containers increase in world trade, they become to that extent a rising peril to safety on our highways.

One other observation: the increased use of containers in domestic transport in evident. Will shippers opt to have their products "cube out" in these domestic intermodal containers with the same degree of abandon that is so common among shippers of international intermodal containers?

## NJMTA RECOMMENDATIONS

The trucking industry is not asking for federal government — least of all, congressional intervention — in normal marketplace practices among competing industries. On the contrary, the trucking industry wants a fair and reasonable Federal Maritime Agency monitoring of and responsibility for the enforcement of current maximum gross, axle and tire weight laws in America and its state jurisdictions. But truck operators should not be the scapegoats!

NJMTA recommends, therefore:

1) Immediate action by FMC, as directed by the Congress or this Committee of the Congress, to move posthaste to advise international shippers and the foreign ports from which these intermodal containers are shipped that America will no longer accept overweight intermodal containers at its ports.

2) That transportation regulations be rewritten so as to insure that truck operators hauling international intermodal containers cannot be held liable for the overweight containers and that appropriate penalties for such violations be assessed on the shipper, not on the truck operator.

3) That the federal government, through FHWA, prevail upon state jurisdictions from increasing individual axle weight and tire load maximums for self-serving reasons. Intermodal container rules should become uniform throughout the 50 states.

Finally, let us emphasize that this issue is highway safety. Do overweight containers pose a danger to the life and limb of Americans on the highways? Yes, they do! It is time that Congress alert the nation and other nations trading with the United States of this danger. More than talk or more study, the facts call for immediate action!

**WATERFRONT RAIL/TRUCKERS UNION**
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W R T U

Jerry Bakke

June 25, 1990

Committee on Public Works and Transportation
One Hundred First Congress
U.S. House of Representatives
H2-586 House Annex II
Washington, DC 20515

## TESTIMONY FOR JUNE 27-28, 1990, HEARINGS ON ROAD DAMAGE AND SAFETY EFFECTS

Honorable Glenn M. Anderson, Chairman
Subcommittee on Investigations and Oversight

Honorable Bob McEwen, Ranking Republican Member
Subcommittee on Investigations and Oversight

By way of introduction, the undersigned, Jerry Bakke, is the past President and founder of the Waterfront/Rail Truckers Union (WRTU) and serves as a Chamber of Commerce Director of Wilmington, California.

## I. BACKGROUND

### A. THE WRTU

The WRTU represents approximately 1,100 members. WRTU members are primarily owners of one truck and drive said truck as a 'lessor truck driver' for a common carrier. Members and lessor truck drivers:

1. Are not common carriers because of insurance liability
2. Are not in competition with common carriers because they work for common carriers
3. Do not have a valid authority to operate their tractors on the highways for hire

4. Do local hauling and run land bridges

5. Are home every night

The lessor truck drivers work for common carriers that have signed contracts with the steamship companies. Lessor drivers sign only an Equipment Interchange Release (EIR). The EIR is not the signed agreement that is signed between the steamship companies and the common carriers, however, without the signed contract, the lessor driver cannot receive the equipment.

Currently, it is the common carrier and lessor truck driver who directly bear the financial burden of overweight containers whereby they are the ones paying citations, incurring increased insurance premiums from resulting accidents, transloading shipments to become legal on the roads, and paying for permits to legally move overweight containers. The lessor truck driver:

1. Does not and cannot control the weight of cargo containers inbound or outbound, because they are not allowed to break a custom seal on any port container without custom or port authority.

2. Does not have verification of cargo container weight when picking up containers; the drivers only have paperwork which is not always accurate.

It is the WRTU's position that the shipper or consignee should directly bear the financial responsibility of the overweight containers.

## B. PURPOSE OF HEARINGS

It is my understanding that the purpose of this hearing is:

1. To take a look at import and export overweight containers

2. Road damage and safety effects resulting from overweight containers

Whatever administrative or legislative action is taken must be on a national level. This would allow all parties involved in any transaction to be competitive within the USA, i.e., ports, shippers, consignees, freight forwarders, common carriers, and steamship lines. By

enacting a national policy, all parties involved in trade would be operating within the same set of guidelines and thereby be competitive within the USA.
Now to address the specific items mentioned in the June 6, 1990, letter from Congressmen Glenn M. Anderson and Bob McEwen.

## II. PETITIONS DENIED BY THE FMC

It is the WRTU consensus of opinion that the Federal Maritime Commission (FMC) should have set responsible conditions or accepted the responsibility of regulating overweight cargo containers in the USA. However, the FMC elected not to regulate overweight containers when they denied Petitions 03-89 and 04-89 regarding the amount of cargo weight per container and per cargo container rates.

## III. FACTORS CONTRIBUTING TO OVERWEIGHT CONTAINER PROBLEM

The following are some of the factors contributing to the overweight container problem:

1. Diversion of Funds - Reducing Road Repairs
2. Safety - Lack of Federally Enforced Guidelines
3. Deregulation
4. Human Rights

### A. DIVERSION OF FUNDS

One of the major causes for deterioration of road conditions is due to the increasing tendency (1) to allow cargo containers to be loaded over the designated weights of our highways, and (2) lessor truck drivers are paid to go around scales with over load and unsafe equipment.

There has been an increase in gas and fuel taxes designated to repair or improve highways in California, however, these taxes have been diverted from their initial purpose.

In addition, the shippers authorizing these overweight containers have not been paying their fair share of these fines.

At the December 4, 1985, Oakland, California, "Assembly Transportation Committee Hearings on Overweight Truck Cargo Container", page four stated (see attached):

> "Ten trucks 10% over the legal limit cause the same damages as 15 legally loaded trucks or 90,000 full-size automobiles or 654,000 compact cars. Increases in allowable weight limits and other factors demonstrate the tremendous adverse effect overweight trucks have on California highways."

On page thirty-one of the same hearings, California Highway Patrol Captain Dwight O. Helmick stated (see attached):

> "When using mobile roving enforcement units, they get a clear one-third of the trucks they stop, on the highways, 36% are overloaded, but in the port areas, whether it be Los Angeles, San Diego or Oakland, it jumps to 72%."

WRTU feels that highway deterioration resulting from overweight cargo containers should be a major part of the reasoning to enact new administrative or legislative rules.

The desirable position would be the lessor truck driver be recognized by the National Labor Relation Board (NLRB). There is evidence that the lessor driver is under control by other factors of business.

Attached is a Federal employment tax determination. It spells out their findings as to what is the Federal Insurance Contribution Act and for collection of income tax at source on wages.

## B. SAFETY - LACK OF FEDERALLY ENFORCED GUIDELINES

Assuring safety in our work place and on our nation's highways should be our top priority. Safety saves lives and prevents injuries and accidents which also improves productivity. We cannot only look at drivers, vehicle and highway safety programs, but we must also include all levels of responsible parties involved when it comes to import and export overweight cargo containers.

In January 1990, police officers targeted violators traveling in the Los Angeles port area and cited traffic violations, including:

- one truck impounded due to an overweight of 27,000 pounds
- one leaking container of ethyl alcohol (highly combustible)
- one container of 30,000 pounds of poison with incomplete papers

- unsafe brakes
- bad tires
- lights out of order
- exhaust
- speed

Example:

In April 1989, Michael Gomez of Montebello, California, was killed while forced to sit in his tractor cab as a container fell onto his tractor cab. Matson Navigation officials said he was in a hard hat area and, therefore, could not get out of his tractor. Matson failed to tell the news media:

- they were using "J" hooks that were out dated in the early 1970's
- the container was one that was to be inspected every six months and had not been inspected since 1982
- the accident happened because the "J" hooks pushed the container apart, resulting it the container being release and falling

WRTU believes a solution to this problem lies in strong Federal leadership and uniform guidelines for all levels of business, including the Fortune 500. The safety legislation of the 1980's has been removed from the Fortune 500 and only applied to the small business or labor person of this nation.

## C. DEREGULATION

Truck deregulation has allowed the Interstate Commerce Commission to remove itself legislatively accountable and abdicating its responsibility and sacrificing public lives. It has placed at risk the public's lives, robbed employees of jobs, increased bankruptcies, dissipated private capital, lessened consumer choices, and decreased consumer protection. It has placed at risk the infrastructure of highways and placed a risk on the public's lives.

Since deregulation, the Fortune 500 has been given the opportunity and sword to exercise market dominance at the expense of the public safety and small business. Deregulation strategy of most shippers is pointed toward market dominance. Market dominance is characterized by conflict and rivalry. A primary objective is to enhance your bargaining leverage at all other's expense so as to dictate terms of the shipping relationship. Shipper's action since deregulation has been to enlarge their economic clout. That is why the Fortune 500 are principally promoting deregulation.

At the same time the Fortune 500 have cut the rates in half for truckloads, they have still increased consumer prices. What antitrust law or economic venture does the public enjoy here? "None!" When everything is deregulated, the shippers no longer have to worry about the cost of justified rates. It is what they can force their carriers to haul. The carrier must (1) try to make up the difference for hauling at a higher price for someone who has less clout or (2) use a lessor truck driver and cut its piece work pay to the lessor driver to make up the difference. These large organizations of shippers demonstrate a desire to remove themselves from third party liability, compensatory cost review and, basically, no safety review.

What benefits have been seen with overweight containers through deregulation?

The accountability of the legislature has been removed even though the legislature has met nearly every one of their requests for more staff and enforcement powers. It has brought greater risks to the public. By encouraging unchecked, untrained, uninformed competition to enter the market place in an effort to undercut a stable, informed motor carrier network, wholely and solely for the purpose of reducing large monopolistic shippers' cost. The Fortune 500 selectively reduced transportation costs, displaced thousands of employees, and destroyed their pension plans and dreams without providing any measurable - in fact, doubtful - benefit to the general consumer. Deregulation has provided large shippers an opportunity to participate in one of the largest big business power plays.

## D. HUMAN RIGHTS

Without union control that was put in place at the turn of the century to give employees the benefit to say "no" to unsafe working conditions, we have created human rights violations right here in the United States.

How can we make a lessor truck driver responsible for something he cannot correct himself? Our legislators have not been able to correct it.

When our legislators cannot stand up against big businesses, then something is drastically wrong! Human rights violations are right here in America -- every day!

Our President has cried about human rights in foreign countries, but he does not cry for the human rights violations caused by our big businesses right here in America.

Example:

Sergio Garcia rakes leaves in the Wilmington, California, parks (125 hours) to work off overweight tickets he received. Our own news media plays down this type of human rights violation. What is the difference if Sergio Garcia was back in his home country of Cuba? They keep it a secret there, too.

The illegal immigrants that come into our country and are now working in our port areas show the failure of our legislators to see to it that our laws are enforced. Our jobs have been trulyexported right here in America. This failure of policies which further erode the nation's industrial and manufacturing base shows a large depletion in our tax structure.

## IV. FHA ANALYSIS

Since I have not seen nor read the PIERS report, nor the FHA analysis, no comment is being submitted.

## V. PROPOSED SOLUTION

Whatever solution is enacted upon, it should be on a national basis so all ports, lessor truck drivers, common carriers, shippers, consignees, freight forwarders, and steamship lines are competing on the same basis across the United States.

The solution should increase the safety of the people and property on the highways and reduce the amount of road damages resulting from overweight containers.

The solution lies in regulation on a national basis. Some of the areas to be regulated include:

- Federal weight limits for all containers by the size of the container

- Prohibiting steamship line agents and port terminals from releasing imported overweight containers
- Prohibit illegal aliens from working in the port areas
- Uniform permit system for oversized loads
- Uniform guidelines for routing and operating
- Deadline on spending monies collected for intended purposes
- Prevent diversion of funds
- Scales in terminals
- Steamship lines not allowed to accept overweight containers for discharge in the USA

To elaborate on a few of the above proposals:

1. The City of Los Angeles, with public financing, is providing employment services for day laborers. These are open-air, street-side locations where individuals seeking day labor may congregate, be served coffee and refreshments, have the use of toilets and other amenities, while waiting for someone to drive by and hire them. One such site is located at Harbor Region Park, in the Wilmington/Harbor City area.

   While we can appreciate the humanitarian ideals that may have spawned this effort, we are most concerned about the fact that it seems to be in violation of Federal law.

   It is doubtful the people recruiting day laborers are declaring wages paid for tax purposes, as dictated by law. Further, it is a known fact that many who seek this type of employment in the Los Angeles area are not legal residents. Since proof of citizenship or legal alien status are not requested by the city, this program is in violation of the Immigration and Naturalization Act of 1986, under which traditional employers must operate. By promoting hiring in this manner, the city is encouraging the hiring of illegal aliens and taking no responsibility for illegal hiring practices.

As past President of a labor organization of truck drivers, I have been working hard for many years to keep undocumented, unlicensed, uninsured drivers off our streets. This program will most certainly have a harmful affect on the progress we've made, since it will now be that much easier to hire someone to drive trucks with no questions asked.

It is particularly offensive that the city's newest employment service is doing business within close proximity to where our children play and go to school, and where our senior citizens live. This community now faces a greater risk due to the unsavory element this program is attracting.

This program has put labor of illegal aliens in competition with American workers. The illegal alien has no reason to respect our laws, has no financial responsibility, no reason to work for the same wages as American residents. The illegal alien is hired to do the jobs Americans refuse to do because of illegal aspects associated with those particular jobs.

2. Scales should be installed at all terminals so the drivers can check the weight per axle before leaving port terminals. If the container is overweight, the port or common carrier should have the option of contacting the consignee to determine what should be done about the overweight, i.e., transload inside the terminal if CFS facilities are available or obtain and pay for overweight permits to move the load.

3. The steamship lines should not accept overweight cargo containers unless they have on-dock container freight stations (CFS) available. If CFS on-dock facilities are not available, the steamship lines should not accept the overweight cargo containers from shippers in other countries.

The steamship lines will not accept cargo containers that are not legal in other countries. i.e., high cube 40 foot containers will not be accepted by the steamship lines for shipment to Kobe, Japan. Therefore, the precedence has been established by the steamship lines to honor the surface transportation requirements of other countries.

Government policy needs to be revamped so that there is an increased cooperation among the Federal departments, administration, and agencies responsible for transportation activities, as well as with their state and local counterpart.

* * *

## VI. SUMMARY

For 20 years I have been involved with the trucking industry. I have worked with public hearings for some five years. During this time I have heard Fortune 500 companies claim the state of California should be driven by their needs or else business will vacate California. So be it! New growth in this state has been principally home grown which has brought us to one of the largest transit economies in the world. There is no one going to vacate California, or the United States, without a more progressive replacement.

All cargo movement should be regulated, whether it is at the point of origin or its port of entry, by the Federal Maritime Commission (FMC) as the regulatory authority.

Thank you for giving me this consideration of time to be heard.

Respectfully submitted,

WATERFRONT/RAIL TRUCKERS UNION

Jerry Bakke
Past President

cc:

attachments

ATTAched

**Internal Revenue Service**

District
Director

Department of the Treasury
Internal Revenue Service
34 Civic Center Plaza
P. O. Box C-12699
Santa Ana, CA 92712

Person to Contact:
Herbert Bailey
Telephone Number:
714-836-2395
Refer Reply to:
#486
Date:
JUN 22 1989

J-Gem Transportation, Inc.
1418 West 17th Street
Long Beach, CA 90813

LN:HB 89-022

Dear Taxpayer:

This is a Federal Employment Tax Determination with respect to the working relationship between the Firm and a Worker who performed services as a TRUCK DRIVER.

The pertinent facts submitted for consideration are:

1) The Worker was required to have a license which would eliminate the need for training and instructions.

2) The Worker performed services under the Firm's Public Utility License or Interstate Commerce Commission License.

3) The Worker's services were an integral part of the Firm's business.

4) There was a continuing relationship between the Worker and the Firm.

5) The Worker performed the service at locations designated by the Firm.

6) The Worker was required to report to the Firm daily.

7) The Firm determined the rate per load.

8) The Worker was paid piecework.

9) The Firm charged clients for services of Worker.

10) The Worker provided his own tractor.

11) The Worker did not represent himself to the public as being in the business to perform the same or similar services.

ATTached

12) The Worker did not provide services to others while working for the Firm.

13) The Worker provided services under the Firm's name.

14) The Firm could discharge Worker without incurring liability.

15) The Worker could terminate without incurring liability.

Section 3121(d) of the Internal Revenue Code states that, generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to the results to be accomplished by the work, but also as to the details and the means by which that result is accomplished. It is not necessary that the control actually exist, only the right to control be present.

It is our conclusion that the Firm either exercised or retained the right to exercise, the direction and control over the services performed. This control establishes an employer employee relationship. Accordingly, the Worker would be considered an employee of the Firm for purposes of the Federal Insurance Contribution Act, the Federal Unemployment Tax Act, and for Collection of Income Tax at Source on Wages.

The Firm must therefore issue to the worker a Form W-2, Wage and Tax Statement, on an annual basis.

On November 6, 1978, Section 530 of the Revenue Act of 1978, (copy enclosed) was signed into law. The Act places limitations upon the Internal Revenue Service with respect to any enforcement activities involving employment taxes. Briefly, the Internal Revenue Service may not compel an organization to treat an individual as an employee if the organization has a "reasonable basis" for treating the individual as self-employed.

Sincerely yours,

Patricia L. Paden

for Michael J. Quinn
District Director

ATTACHES

more important is the condition of the road and its effect on highway safety. A major cause of deterioration of road conditions in California is the increasing tendency to violate truck weight limitations.

Statistics will illustrate the point this morning. According to the California Highway Patrol, in 1984 the Department cited 74,507 trucks for overweight violations, a 6.5 percent increase of citations issued in 1973. There were about 209 million tons off-loaded by the CHP in 1984, which is a 43.2 percent increase over the last three quarters. And this is only the beginning of the story.

It is an undisputed truth that commercial vehicles cause most of the damage to our freeway and highway system. As Assemblyman Katz noted, ten trucks 10% over the legal limit cause the same damage as 15 legally loaded trucks or 90,000 full-size automobiles or 654,000 compact cars. Increases in allowable weight limits and other factors demonstrate the tremendous adverse effect overweight trucks have on California roadways. It has been estimated, for example, that the expected design life of pavement in a typical project is 20 years. With increased size limitations in 1976, the life span dropped 40 percent to 12 years; and this does not account for all of the overweights the CHP has tagged since that time. The CHP's Critical Item Inspection processes yielded some glaring safety deficiencies for brakes, steering, tires, and connecting devices. A particular concern is the fact that brake violations presently account for approximately 45 percent of mechanical-caused truck accidents. The question is, what do we do?

The obvious goal is to decrease the number of overweight trucks, but achieving the means to this end could prove to be difficult. Because of increasing competition in the transportation industry, among shippers, railroads, truckers, and airlines, the trend is to move more cargo in a shorter

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We listen to them. We hear the radio traffic. They pull into a truck stop. They sit us out. Literally there are hundreds of trucks -- your staff can tell you that -- in this large yard. They are simply bypassing us or stopping and waiting until we have to shut down.

When we put our folks in the mobile roving enforcement units, like you both were in this morning, we get a clear one-third of the trucks they stop, 36 percent, are overloaded. In the port areas, whether it be Los Angeles, San Diego or Oakland, that jumps to 72 percent. That's very, very significant.

I would like just to make one point, that I believe you or Assemblyman Klehs also made, that you know when you're running overloaded. I did see some heads shake "no, you don't" in the audience. I would only have to politely disagree with that. I think the officers this morning demonstrated that very clearly. I'm not suggesting on the low weights, but on the heavyweights, the officers very clearly showed you two gentlemen and your staff the bulge of the tires, the difficulty in starting up from stop signs, stop lights, the way the trucks move. They are expert enough to tell you by just looking at them; and down here in this particular area, seven out of ten times, they're right. I would suggest that for the most part, a professional truck driver knows when he is tremendously overweight. I think that's how you phrased your question, and I have to agree with you, they do.

I would like to indicate that we think that AB 1483 is a tremendous step forward. I would like to make one recommendation for a possible inclusion in the bill that I think would make it more constructive. In the bill, it suggests that the weight certificates would have to be shown to the California Highway Patrol. We have excellent cooperation with many local police departments, specifically, here in Oakland, in Los Angeles. I would recommend that where it says the weight certificate shall be presented to a member of the California

TESTIMONY OF
JOSEPH CANNY
DEPUTY ASSISTANT SECRETARY FOR POLICY
AND INTERNATIONAL AFFAIRS
BEFORE THE HOUSE COMMITTEE ON
PUBLIC WORKS AND TRANSPORTATION
INVESTIGATIONS AND OVERSIGHT SUBCOMMITTEE

JUNE 27, 1990

GOOD MORNING. THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE THE COMMITTEE TO DISCUSS THE ISSUE OF OVERWEIGHT CONTAINER-CARRYING TRUCKS ON THE HIGHWAYS.

BEFORE I GO ANY FURTHER, I WOULD LIKE TO INTRODUCE THE PANEL THAT IS WITH ME HERE TODAY. THEY ARE HERE TO ASSIST ME IN ADDRESSING ANY QUESTIONS YOU MIGHT HAVE. TO MY LEFT ARE RICHARD LANDIS, ASSOCIATE ADMINISTRATOR FOR MOTOR CARRIERS, FEDERAL HIGHWAY ADMINISTRATION; AND JOSEPH ANGELO, DEPUTY CHIEF, MERCHANT VESSEL INSPECTION AND DOCUMENTATION DIVISION, COAST GUARD. TO MY RIGHT IS JOHN CARNES, CHIEF OF THE DIVISION OF PORTS AND INTERMODAL OPERATIONS, MARITIME ADMINISTRATION.

## BACKGROUND

THE PROBLEM OF OVERWEIGHT VEHICLES CARRYING CONTAINERS BEGAN TO RECEIVE WIDESPREAD RECOGNITION IN THE SPRING OF 1988. IN PARTICULAR, MOTOR CARRIERS COMPLAINED ABOUT A GROWING NUMBER OF OVERWEIGHT VEHICLE CITATIONS ISSUED TO DRIVERS OF TRUCKS TRANSPORTING MARINE CONTAINERS. IN MAY 1988, THE NATIONAL MOTOR CARRIER ADVISORY COMMITTEE REVIEWED THE ISSUE AND REQUESTED THAT THE FEDERAL HIGHWAY ADMINISTRATION CONSIDER THIS PROBLEM AND, IF POSSIBLE, DETERMINE THE EXTENT TO WHICH INTERNATIONAL MARITIME

CONTAINERS WERE BEING TENDERED TO MOTOR CARRIERS SO AS TO RENDER CONVENTIONAL HIGHWAY TRANSPORT VEHICLES OVERWEIGHT.

THE DEPARTMENT OF TRANSPORTATION HAS SUBSEQUENTLY BEEN EXAMINING VARIOUS ASPECTS OF THIS ISSUE, BOTH IN THE CONTEXT OF AN ONGOING ANALYSIS OF ALL OVERWEIGHT VEHICLES AND AS A UNIQUE SUBSET.

THE FEDERAL-AID HIGHWAY ACT OF 1956 PLACED LIMITS ON THE WEIGHT OF VEHICLES OPERATING ON THE INTERSTATE SYSTEM TO PREVENT THE PREMATURE DETERIORATION OF THIS VITAL HIGHWAY NETWORK AND TO PROTECT THE SUBSTANTIAL FEDERAL INVESTMENT IN THIS SYSTEM'S CONSTRUCTION. FEDERAL WEIGHT LAWS ARE APPLICABLE ONLY TO THE INTERSTATE HIGHWAY SYSTEM, WITH STATE LAW GOVERNING WEIGHT LIMITS ON ALL OTHER HIGHWAYS. SOME STATES ALLOW SIGNIFICANTLY HEAVIER TRUCKS OFF THE INTERSTATE, BUT A FEW CONTINUE TO IMPOSE LOWER LIMITS. STATES OFTEN HAVE DIFFERENT WEIGHT LIMITS, AS WELL AS DIFFERENT APPROACHES TO VEHICLE WEIGHT ENFORCEMENT. ENFORCEMENT OF BOTH FEDERAL AND STATE LIMITS IS ASSIGNED TO THE STATES.

VEHICLE WEIGHT LIMITS ARE NOT TRULY UNIFORM EVEN ON THE INTERSTATE SYSTEM, HOWEVER. THE GRANDFATHER CLAUSES IN SECTION 127 OF TITLE 23 OF THE US CODE ALLOW TRUCKS TO EXCEED FEDERAL LIMITS IN A GIVEN STATE, PROVIDED THOSE VEHICLES WERE LAWFUL UNDER STATE LAWS OR REGULATIONS IN EFFECT IN 1956 OR -- IN THE CASE OF AXLE SPACING TABLES -- 1975. TWENTY-THREE STATES AND THE DISTRICT OF COLUMBIA HAVE AT LEAST ONE AXLE-WEIGHT LIMIT THAT IS HIGHER THAN THE FEDERAL WEIGHT LIMITS FOR SINGLE AND TANDEM AXLES, AND 30 STATES ALLOW TRUCKS TO OPERATE ON INTERSTATE HIGHWAYS WITH GROSS VEHICLE WEIGHTS EXCEEDING THE FEDERAL MAXIMUM WEIGHT LIMIT OF

80,000 POUNDS. THIS DIVERSITY CREATES REAL OR PERCEIVED COMPETITIVE DIFFERENCES AMONG STATES AND PORTS AND ALSO PRESENTS A MAJOR PROBLEM TO SHIPPERS WHO MUST TRANSPORT CARGO ACROSS INTERNATIONAL OR INTERSTATE BORDERS AT WEIGHTS THAT DO NOT EXCEED THE LOWEST LIMIT.

REGULATIONS GOVERNING THE ISSUANCE OF SPECIAL PERMITS FOR OVERWEIGHT TRUCKS ON THE INTERSTATE ARE ALSO GRANDFATHERED. A GROWING NUMBER OF STATES NOW INTERPRET THESE RIGHTS BROADLY AND ROUTINELY ISSUE PERMITS FOR GROSS WEIGHTS ABOVE 80,000 POUNDS. STATES WITH MORE RESTRICTIVE PERMIT POLICIES ARE UNDER PRESSURE TO CHANGE.

IN SHORT, COMPETITION AMONG THE STATES AND PORTS FOR MARITIME TRAFFIC AND OTHER BUSINESS OPPORTUNITIES IS MAKING THE LACK OF UNIFORMITY IN STATE AND FEDERAL WEIGHT LAWS MORE CRITICAL. THE STATES' WILLINGNESS TO ACCEPT CURRENT FEDERAL WEIGHT LIMITS ON THE INTERSTATE SYSTEM APPEARS TO BE DECLINING.

THE HIGHWAY DAMAGE ASSOCIATED WITH THE OPERATION OF OVERWEIGHT CONTAINER-CARRYING VEHICLES IS BUT A PART OF THE MUCH GREATER DAMAGE BELIEVED TO BE GENERATED BY OVERWEIGHT VEHICLES IN GENERAL. UNFORTUNATELY, WE HAVE NO QUANTITATIVE ESTIMATE OF THE DAMAGE CAUSED BY OVERWEIGHT VEHICLES. THIS INFORMATION GAP MAKES IT IMPOSSIBLE TO PRECISELY ESTIMATE THE HIGHWAY DAMAGE CAUSED BY THE SUBSET REPRESENTED BY OVERWEIGHT CONTAINER-CARRYING TRUCKS.

BEFORE I GO ANY FURTHER, I WOULD LIKE TO GIVE AS SIMPLE AN EXPLANATION AS I CAN OF THE FORMULA BY WHICH ALLOWABLE GROSS WEIGHT LIMITS ON THE INTERSTATES ARE CALCULATED. THIS FORMULA SUPPLEMENTS THE FEDERAL GROSS VEHICLE WEIGHT LIMIT OF 80,000

POUNDS. SINCE 1975, MAXIMUM GROSS VEHICLE WEIGHTS HAVE BEEN CALCULATED BY A FEDERAL FORMULA -- CALLED BRIDGE FORMULA B -- BASED ON THE NUMBER OF AXLES ON A VEHICLE AND THE DISTANCE BETWEEN THE EXTREME AXLES. AXLE SPACING AND DISTANCE RELATIONSHIP IS AS IMPORTANT IN DESIGN OF BRIDGES AS ARE THE AXLE WEIGHTS THEMSELVES. THE IMPORTANCE OF CONTROLLING AXLE WEIGHTS AS WELL AS AXLE SPACINGS CAN BE ILLUSTRATED BY WHAT HAPPENS WHEN A PERSON TRIES TO WALK ACROSS ICE THAT IS BARELY THICK ENOUGH TO SUPPORT HIS OR HER WEIGHT. WALKING UPRIGHT, THE PERSON IS LIKELY TO FALL THROUGH BECAUSE THE WEIGHT OR LOAD IS CONCENTRATED. IF THAT PERSON STRETCHED OUT PRONE ON THE SAME ICE AND WENT ACROSS, IT IS LESS LIKELY THAT HE OR SHE WOULD BREAK THROUGH. THE LATTER APPROACH IS MORE EFFECTIVE BECAUSE THE LOAD OR WEIGHT IS SPREAD OUT OVER A LARGE AREA.

PROBLEMS OF BRIDGE DEGRADATION OCCUR WHEN GROSS VEHICLE WEIGHTS INCREASE OR A GREATER NUMBER OF REPETITIVE LOADINGS OCCUR THAN WERE ANTICIPATED IN THE BRIDGE DESIGN PROCESS. HIGHWAY PAVEMENTS ALSO DETERIORATE THROUGH REPETITIOUS LOADINGS, BUT THE CAUSAL FACTORS ARE AXLE LOADS, NOT GROSS VEHICLE WEIGHTS. RELATIVELY SMALL INCREASES IN AXLE LOADS OR LOAD REPETITIONS CAN PRODUCE EXPONENTIAL INCREASES IN THE RATE OF PAVEMENT DETERIORATION. ALSO, REPEATED APPLICATION OF HEAVY AXLE LOADS AND EXCESSIVE GROSS VEHICLE WEIGHT CAN ACCELERATE THE NEEDS FOR PAVEMENT RESURFACING OR RECONSTRUCTION, STRENGTHENING, OR REPLACING BRIDGE STRUCTURES, INCREASED LEVELS OF MAINTENANCE, AND INCREASED FINANCIAL BURDENS AND COMMITMENTS OF PUBLIC FUNDS.

AS IS THE CASE FOR THE GENERAL CATEGORY OF OVERWEIGHT VEHICLES, THERE ARE SAFETY PROBLEMS ASSOCIATED WITH EXCESSIVELY HEAVY CONTAINER-CARRYING VEHICLES OPERATING OVER HIGHWAYS. EXTREMELY HEAVY MARITIME CONTAINERS CAN DECREASE A TRUCK'S BRAKING CAPACITY AND INCREASE THE STRESS ON THE TRUCK'S MECHANICAL COMPONENTS. VERY HEAVY CONTAINERS MAY OVERSTRESS TIRES AS WELL AS BRAKES, RESULTING IN TIRE FAILURE AND POSSIBLE LOSS OF STEERING CONTROL. THE CARGO WITHIN A CONTAINER MAY ALSO IMPAIR SAFE VEHICLE OPERATIONS IF IT IS IMPROPERLY SECURED OR UNEVENLY DISTRIBUTED. IF CONTAINERS ARE LOADED IN WAYS THAT GIVE THEM A HIGH CENTER OF GRAVITY OR THAT LEAVE THEIR CONTENTS SUSCEPTIBLE TO SHIFTING, THE VEHICLE CARRYING THE CONTAINER MAY BE PRONE TO ROLLOVER ACCIDENTS.

## ANALYSIS UNDERTAKEN ON THIS PROBLEM

BECAUSE OF THE HIGH INTEREST IN THE PARTICULAR PROBLEM OF CONTAINER-CARRYING TRUCKS, SEVERAL ANALYSES HAVE BEEN CONDUCTED.

A DEMONSTRATION WAS CONDUCTED IN MARCH 1988 IN NEWARK, NEW JERSEY, TO INVESTIGATE THE FEASIBILITY OF DISTRIBUTING AXLE LOADS OF CONTAINER-CARRYING VEHICLES TO COMPLY WITH HIGHWAY WEIGHT LIMITS. SPONSORED BY THE BI-STATE HARBOR CARRIER'S CONFERENCE, THE STEAMSHIP OPERATORS INTERMODAL COMMITTEE, MAHER TERMINALS, AND THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, THE DEMONSTRATION INVOLVED ASSEMBLING FIVE DIFFERENT TRUCK TRACTORS, SHIPPING CONTAINERS, AND TRUCK CHASSIS IN MORE THAN 75 DIFFERENT CONFIGURATIONS. THE BI-STATE HARBOR CARRIERS' "WEIGH-IN" SHOWED

THAT COMPLIANCE WITH INTERSTATE HIGHWAY WEIGHT LIMITS WOULD BE DIFFICULT IF A LOAD EXCEEDING 38,000 POUNDS OF CARGO IN A 20-FOOT CONTAINER WERE TRANSPORTED ON A 27-FOOT CHASSIS OR A LOAD EXCEEDING 44,000 POUNDS OF CARGO IN A 40-FOOT CONTAINER WERE TRANSPORTED ON A 40-FOOT CHASSIS.

IN JUNE 1989, A SECOND WEIGH-IN WAS CONDUCTED IN NEWARK, NEW JERSEY, USING INNOVATIVE CONTAINER CHASSIS WITH LIFT AXLES, ADDITIONAL AXLES, AND/OR EXTENDABLE CHASSIS. THIS DEMONSTRATION SHOWED THAT IN CASES WHERE CONTAINERIZED CARGO SLIGHTLY EXCEEDED THE WEIGHT THRESHOLDS ESTABLISHED BY THE EARLIER WEIGH-IN, INNOVATIVE CONTAINER CHASSIS COULD REDISTRIBUTE THE LOADS TO COMPLY WITH FEDERAL WEIGHT LIMITS. ALTHOUGH THESE INNOVATIVE CHASSIS ARE BECOMING MORE READILY AVAILABLE, THE TREMENDOUS INVESTMENT IN EXISTING CONTAINER CHASSIS AND THEIR LONG SERVICE LIVES WILL LIKELY RESULT IN ONLY INCREMENTAL REPLACEMENT WITH CHASSIS HAVING BETTER WEIGHT DISTRIBUTION CAPABILITIES.

IN AN EFFORT TO DETERMINE WHAT THE EXTENT OF THE PROBLEM WITH MARINE CONTAINERS MIGHT BE, THE FEDERAL HIGHWAY ADMINISTRATION UNDERTOOK AN ANALYSIS OF CONTAINERS IN OUR EXPORT AND IMPORT TRADES. THE JOURNAL OF COMMERCE MAINTAINS A DATA BASE KNOWN AS THE PORT IMPORT/EXPORT REPORTING SERVICE (PIERS) CONTAINING INFORMATION EXTRACTED FROM WAYBILLS AND BILLS OF LADING FOR CONTAINERS TRANSPORTED THROUGH U.S. PORTS. IN A 1989 PAPER TITLED ANALYSIS OF PORT IMPORT/EXPORT REPORTING SERVICE (PIERS) DATA TO REVEAL POTENTIALLY OVERWEIGHT CONTAINER MOVEMENTS ON AMERICA'S HIGHWAYS, FHWA WITH THE ASSISTANCE OF THE MARITIME ADMINISTRATION ANALYZED A SAMPLE OF PIERS DATA, FOCUSING ON THE COMMODITIES AND

CARGO WEIGHTS CARRIED IN 20-FOOT AND 40-FOOT CONTAINERS, WHICH ARE USED IN OVER 90 PERCENT OF CONTAINERIZED FREIGHT MOVEMENTS, AND THE CONTAINERS' PORTS OF ORIGIN AND DESTINATION. BASED ON THE WEIGHT THRESHOLDS DETERMINED BY THE FIRST DEMONSTRATION "WEIGH-IN", THE FHWA ANALYSIS REVEALED THAT APPROXIMATELY 33 PERCENT OF ALL 20-FOOT AND 40-FOOT CONTAINERS MOVING THROUGH U.S. PORTS CARRIED CARGO LOADS THAT WOULD LIKELY CAUSE THE VEHICLES CARRYING THESE CONTAINERS TO VIOLATE FEDERAL HIGHWAY WEIGHT LIMITS IF CARRIED BY TRUCK. THE PROBLEM IS MORE PRONOUNCED FOR EXPORT CONTAINERS THAN FOR IMPORT CONTAINERS: THE SAMPLE GIVES AN INDICATION THAT 41 PERCENT OF EXPORT AND 17 PERCENT OF IMPORT 40-FOOT CONTAINERS WERE POTENTIALLY OVERWEIGHT. THE FHWA ANALYSIS ALSO FOUND THAT THESE POTENTIALLY OVERWEIGHT CONTAINERS FREQUENTLY CARRIED HIGH-DENSITY COMMODITIES.

## TRANSPORTATION/ECONOMIC FACTORS CONTRIBUTING TO THE PROBLEM

MUCH HAS BEEN WRITTEN ABOUT THE CAUSES OF THIS APPARENTLY INTENSIFYING PROBLEM. I WILL TRY TO PROVIDE YOU WITH A SUMMARY OF OUR UNDERSTANDING OF THE FACTORS THAT CONTRIBUTE TO IT.

THE INTERNATIONAL NATURE OF MANY INTERMODAL CONTAINER MOVEMENTS, WHICH HAS RESULTED IN A GLOBAL ECONOMY, PLAYS A MAJOR ROLE. BECAUSE CONTAINERS CAN BE USED IN SO MANY WAYS AND IN SO MANY PLACES, CONTAINER CONSTRUCTION STANDARDS ARE ESTABLISHED BY AN INTERNATIONAL INDUSTRY CONSENSUS GROUP, THE INTERNATIONAL ORGANIZATION FOR STANDARDIZATION (CALLED ISO), WITH

REPRESENTATIVES FROM MANY COUNTRIES. THE STANDARD 20-FOOT AND 40-FOOT CONTAINERS WERE DEVELOPED TO ENSURE INTERCHANGEABILITY, AND THE MAXIMUM WEIGHTS -- THE SUM OF THE CONTAINER'S WEIGHT AND THAT OF THE CARGO IT CARRIES -- IS BASED ON THE STRUCTURAL INTEGRITY OF THE CONTAINER, NOT THE TRANSPORTATION USE TO WHICH IT IS PUT. THE SO-CALLED GROSS CERTIFICATED WEIGHT OF THE CONTAINER IS SET BY ENGINEERING TESTS AND IS MARKED ON A PLATE PERMANENTLY ATTACHED TO THE CONTAINER.

THESE LIMITS ARE DESIGNED TO ENSURE THAT THE CONTAINER WILL NOT BE OVERLOADED. HOWEVER, BECAUSE THESE CONTAINERS ARE SO WELL-BUILT, A MARINE CONTAINER THAT IS LEGALLY AND SAFELY LOADED FOR WATERBORNE OR RAIL TRANSPORTATION CAN BE ILLEGAL OR UNSAFE FOR U.S. HIGHWAY USE, DEPENDING ON THE WEIGHT, DISTRIBUTION, AND/OR EQUIPMENT. THIS SAME CONTAINER MAY NOT BE OVERWEIGHT IF LOADED ON A SHIP OR A RAILCAR. FOR EXAMPLE, 20-FOOT MARINE CONTAINERS CAN SAFELY AND EFFICIENTLY CARRY 7,800 POUNDS MORE THAN THE INTERSTATE WEIGHT LIMITS INDICATED IN THE FIRST DEMONSTRATION TEST, AND 40-FOOT CONTAINERS CAN CARRY 31,200 POUNDS MORE. AT THESE HIGHER WEIGHTS, THESE CONTAINERS ARE NOT ILLEGAL IF CARRIED BY A MODE OTHER THAN HIGHWAY.

A SECOND FACTOR IS THAT THE SHIPPER COMPANIES AND FREIGHT FORWARDERS LOAD CONTAINERS, BUT MAY NOT BE RESPONSIBLE FOR TRANSPORTING THE CONTAINERS. SHIPPERS ARE INCLINED TO LOAD A CONTAINER UNTIL IT IS FULL, SINCE MOST SHIPPING RATES ARE LEVIED ON A "PER BOX" BASIS RATHER THAN ON A CONTAINER'S LOADED WEIGHT. SOMETIMES SHIPPERS ILLEGALLY OVERLOAD A CONTAINER, IN WHICH CASE IT IS OVERWEIGHT WHETHER IT IS CARRIED ON A U.S. HIGHWAY OR NOT.

SOMETIMES SHIPPERS ARE SIMPLY UNAWARE OF THE TRANSPORTATION CHAIN FOR THAT CONTAINER AND DO NOT KNOW THAT A LEGALLY LOADED CONTAINER WILL BECOME ILLEGAL WHEN CARRIED ON A TRUCK IN A STATE WITH LOWER VEHICLE WEIGHT LIMITS. THE MULTIPLICITY OF STATE WEIGHT LAWS CONTRIBUTES TO THIS CONFUSION, PARTICULARLY FOR SHIPPERS ABROAD. WEIGHT LIMITS VARY FROM PORT TO PORT AND FROM STATE TO STATE.

COMPLICATING THE SITUATION ARE THE VARYING CONFIGURATIONS OF CONTAINER-CARRYING TRUCK CHASSIS. AS INDICATED BY THE SECOND WEIGH-IN, A CHANGE IN CHASSIS AND/OR AXLE CONFIGURATION CAN SOMETIMES TURN AN OVERWEIGHT CONTAINER-TRUCK UNIT INTO A LEGAL UNIT. ADVANCES IN SUCH TECHNOLOGY ARE EXAMINED BY THE MARITIME ADMINISTRATION, WHICH HAS A STATUTORY MANDATE TO "STUDY MEANS AND METHODS OF ENCOURAGING THE DEVELOPMENT AND IMPLEMENTATION OF NEW CONCEPTS FOR THE CARRIAGE OF CARGO ... AND THE ECONOMICAL AND TECHNOLOGICAL ASPECTS OF THE USE OF CARGO CONTAINERS ...." WE BELIEVE THAT IT IS IMPORTANT TO CONTINUALLY EXAMINE SUCH TECHNIQUES.

## RECENT FEDERAL MARITIME COMMISSION ACTION

YOU HAVE REQUESTED THAT WE DISCUSS THE TWO PETITIONS FILED WITH THE FEDERAL MARITIME COMMISSION (FMC) CONCERNING POSSIBLE REMEDIES TO A SEGMENT OF THE OVERWEIGHT VEHICLE PROBLEM. NOTICES OF THE PETITIONS WERE PUBLISHED IN THE FEDERAL REGISTER ON AUGUST 23, 1989, AND COMMENTS SOLICITED. THE FIRST PETITION, P3-89, PROPOSED MAXIMUM CONTAINER WEIGHTS, AND THE SECOND, P4-89, PROPOSED ELIMINATION OF "PER CONTAINER" RATES. THESE PETITIONS

WERE DENIED BY THE FMC IN AN ORDER DATED JUNE 5, 1990, ON THE GROUNDS THAT THE PETITIONERS HAD NOT PROVIDED A SUPPORTABLE OR APPROPRIATE BASIS FOR ACTION, AND THAT GRANTING THE PETITIONS WOULD INTERFERE WITH A CONGRESSIONALLY CREATED COMPACT BETWEEN THE FEDERAL GOVERNMENT AND THE STATES.

IN PRINCIPLE, THE DEPARTMENT OF TRANSPORTATION AGREES THAT WHOEVER OVERLOADS CONTAINERS IS RESPONSIBLE FOR SUBSEQUENT VIOLATIONS OF LAW RESULTING FROM OVERLOADING. THE DEPARTMENT REALIZES THAT THERE ARE PRACTICAL OBSTACLES TO APPLYING THIS PRINCIPLE, PARTICULARLY IN THE CASE OF IMPORT CONTAINERS. WE BELIEVE THAT THE DENIAL OF THE PETITIONS WILL TURN THE SEARCH FOR SOLUTIONS TO OTHER APPROACHES THAT WE WOULD LIKE TO EXPLORE WITH THE COMMITTEE. THIS IS AN EXTREMELY COMPLEX PROBLEM, AS THE COMMENTS TO THE DOCKET INDICATED. I WOULD LIKE TO BRIEFLY REVIEW OUR VIEWS OF THE TWO PETITIONS.

AS FOR PETITION P3-89, WHICH REQUESTED THAT THE FMC ESTABLISH MAXIMUM CONTAINER WEIGHTS, I HAVE ALREADY POINTED OUT THAT A MARINE CONTAINER THAT IS LEGALLY OVERWEIGHT FOR HIGHWAY TRANSPORTATION MAY BE SAFE FOR MARITIME OR RAIL TRANSPORTATION. ESTABLISHING MAXIMUM CONTAINER WEIGHTS COULD ELIMINATE SOME OVERLOADED CONTAINERS; HOWEVER, THAT MAY UNNECESSARILY HAMPER THE UTILIZATION OF CONTAINERS STRUCTURALLY CERTIFIED TO CARRY CARGOES HEAVIER THAN THE PETITION'S PROPOSED WEIGHTS. RESTRICTING CARGO WEIGHT TO LESS THAN THE CONTAINER'S DESIGN CAPACITY WOULD INTRODUCE ECONOMIC INEFFICIENCIES TO BOTH THE MARITIME AND RAIL MODES OF TRANSPORTATION. MARINE CONTAINERS MAY ARRIVE AT OR

DEPART FROM A PORT BY RAIL OR BE LOADED OR UNLOADED AT THE PORT, IN WHICH CASE THEY DO NOT AFFECT THE HIGHWAYS.

IT IS NOT CLEAR THAT THE PETITION WOULD HAVE PREVENTED ALL OVERLOADED MARINE CONTAINERS FROM TRAVELLING OVER THE NATION'S HIGHWAYS. ACCORDING TO THE PETITION, ONLY SHIPPING LINES MAY UNSTUFF CONTAINERS TOO HEAVY TO BE TRANSPORTED BY TRUCK. IN THE COMPETITIVE ENVIRONMENT OF THE MOTOR CARRIER INDUSTRY, SOME MOTOR CARRIERS MIGHT TAKE A CHANCE AND HAUL CONTAINERS THEY BELIEVE MIGHT BE OVERWEIGHT, SINCE UNDER THE TERMS OF THIS PETITION THE FINES WOULD BE PAID BY THE SHIPPER.

ON THE EXPORT SIDE, BY THE TIME THE CONTAINERS ARE DELIVERED TO OCEAN CARRIERS, THEY WILL HAVE ALREADY TRAVELLED OVER U.S. HIGHWAYS. SOME OCEAN CARRIERS MAY OPT TO MOVE THESE OVERWEIGHT EXPORT CONTAINERS BECAUSE THERE WOULD BE NO FURTHER THREAT TO U.S. HIGHWAYS.

ON THE IMPORT SIDE, OCEAN CARRIERS WOULD HAVE TO ARRANGE FOR SPECIAL HANDLING OF OVERLOADED CONTAINERS AND THEN COLLECT THE ADDED COSTS ASSOCIATED WITH SUCH HANDLING. IT MAY BE QUESTIONABLE BOTH FROM A POLICY AND AN EFFICIENCY STANDPOINT TO EXPECT ONE MODE TO POLICE ANOTHER.

THE PETITION WOULD HAVE ESTABLISHED MAXIMUM WEIGHTS FOR 20-FOOT AND 40-FOOT DRY CONTAINERS AND 20-FOOT, 35-FOOT, AND 40-FOOT REFRIGERATED CONTAINERS. ESTABLISHING A MAXIMUM CARGO WEIGHT FOR A GIVEN CONTAINER DIMENSION WOULD NOT ALLOW FOR THE RANGE OF CONTAINER TARE WEIGHTS RESULTING FROM DIFFERENT METHODS OF CONSTRUCTION. IN ADDITION, THERE ARE VARIATIONS IN THE TARE

WEIGHTS OF CONTAINER-CARRYING HIGHWAY VEHICLES. MOST CONTAINER-CARRYING VEHICLES HAVE THREE COMPONENTS: TRACTOR, CHASSIS, AND CONTAINER. DIFFERENT COMBINATIONS CAN ACCOMMODATE DIFFERENT CARGO WEIGHTS. FOR EXAMPLE, 20-FOOT CONTAINERS MAY BE CARRIED ON 5-AXLE VEHICLES WITH WIDE AXLE SPACING, PERMITTING A MUCH HIGHER PAYLOAD THAN THE CONVENTIONAL 3-AXLE CONTAINER-CARRYING VEHICLE WITH A MUCH SHORTER WHEELBASE.

PETITION P4-89, WHICH SOUGHT THE ELIMINATION OF "PER CONTAINER" RATES, MIGHT HAVE REDUCED A SHIPPER'S INCENTIVE TO OVERLOAD CONTAINERS, BUT IT WOULD NOT NECESSARILY HAVE ELIMINATED THE PROBLEM. SOME INCENTIVES WOULD REMAIN TO OVERLOAD CONTAINERS DUE TO THE "PER CONTAINER" RATES CHARGED BY SOME PORTS AND MOTOR CARRIERS FOR CONTAINER HANDLING, AND THE FACT THAT SOME MOTOR CARRIERS AND PORTS MIGHT ELECT TO TRANSPORT EXCESSIVELY HEAVY CONTAINERS TO ENHANCE THEIR COMPETITIVE POSITIONS.

THE ELIMINATION OF "PER CONTAINER" RATES ALSO SEEMS CONTRARY TO THE SPIRIT OF THE SHIPPING ACT OF 1984. "PER CONTAINER" RATES MOST APPROPRIATELY REFLECT THE COST OF CONTAINER HANDLING AND TRANSPORT, AND ARE SIMPLE AND GENERALLY VIEWED AS MOST REFLECTIVE OF THE COST OF SERVICE PROVIDED BY CARGO CARRIERS.

IN SUMMARY, ALTHOUGH THESE PROPOSALS HAD SOME MERIT FROM THE HIGHWAY POINT OF VIEW, WHEN PUT IN A BROADER CONTEXT THEY RAISED MANY QUESTIONS.

POSSIBLE REMEDIES

THE DEPARTMENT SUPPORTS ACTIONS TO REDUCE THE INCIDENCE OF OVERWEIGHT CONTAINER-CARRYING HIGHWAY VEHICLES THAT WOULD BE CONSISTENT WITH THE FOLLOWING GOALS:

-- ENSURE SAFETY AND PROTECT THE PHYSICAL INTEGRITY OF THE HIGHWAY SYSTEM;

-- ENCOURAGE TECHNOLOGICAL DEVELOPMENT; AND

-- AVOID BARRIERS TO INCREASED WORLD TRADE AND TO EFFICIENCY AND PRODUCTIVITY;

ONE ACTION HAS ALREADY BEEN TAKEN IN THE MARITIME AREA THAT MAY EVENTUALLY CONTRIBUTE TOWARD A SOLUTION IN THE HIGHWAY AREA. RECENT INITIATIVES IN THE INTERNATIONAL MARITIME ORGANIZATION -- IMO -- WILL, AFTER ENTRY INTO FORCE, RESULT IN THE ACTUAL WEIGHT OF CONTAINERS APPEARING ON SHIPPING DOCUMENTS.

THE COAST GUARD REPRESENTS THE DEPARTMENT BEFORE THE IMO, WHICH IS THE MAJOR INTERNATIONAL MARITIME SAFETY ORGANIZATION. THE COAST GUARD HAS RESPONSIBILITY FOR IMPLEMENTING AND ENFORCING VARIOUS INTERNATIONAL CONVENTIONS OF WHICH THE UNITED STATES IS A PARTY. ONE IS THE INTERNATIONAL CONVENTION FOR SAFE CONTAINERS (CSC), WHICH WAS ADOPTED BY IMO IN 1972. THE MAIN PURPOSE OF THIS CONVENTION AND ITS IMPLEMENTING U.S. LEGISLATION WAS TO ESTABLISH MINIMUM STRUCTURAL REQUIREMENTS FOR CONTAINERS TO ENSURE SAFETY IN THE HANDLING, STACKING, AND TRANSPORTING OF CONTAINERS WORLDWIDE. THE CSC DEALS WITH STRUCTURAL REQUIREMENTS. ANOTHER CONVENTION, THE SAFETY OF LIFE AT SEA CONVENTION (SOLAS), IS THE MAJOR INTERNATIONAL CONVENTION FOR THE PROTECTION OF LIFE AND PROPERTY

ON BOARD SHIPS AT SEA AND CONTAINS OPERATIONAL REQUIREMENTS. THE TWO ARE OBVIOUSLY CLOSELY RELATED.

UNDER THE CSC, ALL CONTAINERS USED IN INTERNATIONAL TRANSPORT ARE REQUIRED TO HAVE A SAFETY APPROVAL PLATE AFFIXED TO THE CONTAINER. THE MAXIMUM GROSS WEIGHT OF THE LOADED CONTAINER IS ON THIS PLATE. UNDER THE CSC, THERE IS NO UPPER LIMIT ON WHAT THIS MAXIMUM GROSS WEIGHT CAN BE, PROVIDED THE CONTAINER IS DESIGNED, CONSTRUCTED, AND MAINTAINED TO THE STANDARDS OF THE CSC. SIMPLY PUT, THE STRONGER THE CONTAINER IS DESIGNED AND BUILT, THE HIGHER THE ALLOWABLE MAXIMUM GROSS WEIGHT.

THE PROBLEM OF CONTAINERS BEING LOADED TO MORE THAN THE MAXIMUM GROSS WEIGHT OF THE SAFETY PLATE HAS BEEN DISCUSSED AT IMO FOR THE PAST FEW YEARS. DURING THIS PAST YEAR, THE COAST GUARD PLAYED A MAJOR ROLE AT IMO IN THE DEVELOPMENT OF MEASURES TO MINIMIZE THIS PROBLEM.

THESE MEASURES ARE TWO AMENDMENTS TO THE SOLAS CONVENTION, SUGGESTED BY THE UNITED STATES AND APPROVED BY IMO'S MARITIME SAFETY COMMITTEE RECENTLY. THE FIRST AMENDMENT WOULD PROHIBIT CONTAINERS FROM BEING LOADED TO MORE THAN THE MAXIMUM GROSS WEIGHT INDICATED ON THE SAFETY APPROVAL PLATE UNDER THE CSC.

THE SECOND AMENDMENT REQUIRES THE SHIPPER TO ENSURE THAT, BEFORE LOADING A CONTAINER ON BOARD A SHIP, THE GROSS WEIGHT OF THE CONTAINER IS IN ACCORDANCE WITH THE GROSS WEIGHT DECLARED ON THE SHIPPING DOCUMENTS. THIS REQUIREMENT PLACES THE BURDEN ON THE SHIPPER TO ENSURE THAT THE SHIPPING DOCUMENTS ACCURATELY REFLECT THE GROSS WEIGHT OF THE CONTAINER, SO THAT THOSE HANDLING THE CONTAINER IN THE TERMINAL AND ON THE SHIP KNOW WHAT THEY ARE

DEALING WITH. IF A VIOLATION IS DISCOVERED, THE CONTAINER CAN LEGALLY BE SET ASIDE UNTIL THE VIOLATION IS CORRECTED. THESE AMENDMENTS COULD ENTER INTO FORCE AS EARLY AS NOVEMBER 1992.

WE BELIEVE THAT THESE TWO NEW REQUIREMENTS ARE A NECESSARY FIRST STEP TOWARD RESOLVING THE PROBLEMS OF OVERWEIGHT CONTAINERS. IF THAT INFORMATION IS ALSO IN THE HANDS OF THE TRUCKER, HE OR SHE CAN DETERMINE WHAT EQUIPMENT IS NEEDED TO LEGALLY CARRY THAT LOAD. IT IS OUR UNDERSTANDING THAT THIS IS OFTEN NOT THE CASE, AND WE BELIEVE THE COMMERCIAL REASONS WHY THIS DOCUMENTATION GAP EXISTS SHOULD BE EXPLORED.

THE DEPARTMENT ALSO BELIEVES THAT IMPROVED STATE WEIGHT ENFORCEMENT IS A KEY ELEMENT OF ANY SOLUTION. FHWA CONTINUES TO PROVIDE STRONG ENCOURAGEMENT TO THE STATES TO USE FEDERAL-AID HIGHWAY PLANNING AND CONSTRUCTION FUNDS TO PURCHASE AND INSTALL WEIGHING EQUIPMENT, PARTICULARLY WEIGH-IN-MOTION (WIM) EQUIPMENT FOR TRUCK WEIGHT SURVEYS AND ENFORCEMENT. ALTHOUGH TRUCK WEIGHTS OBTAINED BY WIM EQUIPMENT ARE NOT AS ACCURATE AS THOSE OBTAINED ON PLATFORM SCALES, THEY ARE VERY USEFUL IN SCREENING TRUCK TRAFFIC TO IDENTIFY POTENTIALLY OVERWEIGHT TRUCKS, WHICH CAN THEN BE DIRECTED TO STATIC WEIGH SCALES, WHERE CITATIONS CAN BE ISSUED IF THEY ARE FOUND TO BE OVERWEIGHT. THIS PRACTICE ALLOWS SAFER AND MORE EFFICIENT TRUCK WEIGHING ACTIVITIES AT WEIGH STATIONS.

FHWA IS SEEKING TO REVISE ITS STATE WEIGHT ENFORCEMENT REGULATIONS TO REQUIRE THAT STATE ENFORCEMENT PLANS BE BASED ON TRUCK WEIGHT SURVEY DATA AND ENFORCEMENT RECORDS. THE TRUCK SURVEY DATA WILL INDICATE WHERE AND WHEN OVERWEIGHT TRUCKS ARE

OPERATING, AND ENFORCEMENT RECORDS COULD CONCEIVABLY INDICATE THE CARRIERS OPERATING THEM AND SHIPPERS THAT ARE CAUSING THEM.

FINALLY, THE DEPARTMENT BELIEVES THAT SHIPPER BONDING IS AN OPTION THAT SHOULD BE EXPLORED. BONDING HAS BEEN SUGGESTED AS A WORKABLE SOLUTION TO THE OVERWEIGHT CONTAINER DILEMMA BY SEVERAL PARTIES. IT WOULD ATTACK THE PROBLEM AT ITS HEART, WHICH IS AT LOADING, AND WOULD ADDRESS THE SEEMINGLY OUT-OF-REACH OVERSEAS SHIPPER. A SYSTEM IN WHICH ANY SHIPPER WOULD BE REQUIRED TO POST A BOND FOR THE PRIVILEGE OF HAVING CONTAINERS TRANSPORTED HAS BEEN PROVEN PRACTICAL IN MANY COMMERCIAL TRANSPORTATION TRANSACTIONS. APPLIED TO THIS ISSUE, BONDING COULD BE DEVISED SO THAT A SHIPPER'S GUARANTEE WOULD COVER ANOTHER PARTY'S FINE IN THE EVENT OF A VIOLATION. IT COULD APPLY TO ALL VEHICLES ON THE HIGHWAYS, NOT JUST CONTAINERS TRANSPORTING IMPORTS. IT WOULD HAVE THE EFFECT OF SELF-REGULATION SINCE PRIVATE SECTOR UNDERWRITERS WOULD EITHER EVENTUALLY REFUSE TO BOND CHRONIC OFFENDERS OR SUBSTANTIALLY RAISE THEIR RATES. WE NOTE, HOWEVER, THAT THE BONDING REQUIREMENT WOULD BE RATHER AN ELABORATE NEW REQUIREMENT. NONETHELESS, THERE IS NOTHING TO PREVENT A CARRIER AND SHIPPER FROM ADOPTING THAT SYSTEM BY CONTRACT NOW. INDEED, THERE ARE MANY ASPECTS OF THIS PROBLEM THAT SUGGEST COMMERCIAL SOLUTIONS.

THIS COMPLETES MY PREPARED REMARKS. MY PANEL AND I WOULD BE HAPPY TO ANSWER ANY QUESTIONS YOU MIGHT HAVE.

James E. Curtis

# TESTIMONY

ON BEHALF OF

THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE

BEFORE

SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

U. S. HOUSE OF REPRESENTATIVES

ON

INTERMODAL CONTAINER MOVEMENTS BY TRUCKS

JUNE 27, 1990

Chairman Anderson, Members of the Subcommittee:

I am James E. Curtis, manager of domestic distribution, U. S. Borax and Chemical Corporation, Los Angeles, California. I appear today on behalf of The National Industrial Transportation League. Currently, I am vice president of the League and serve as chairman of the International Container Loading Task Force. Accompanying me is Nicholas J. DiMichael, counsel for the League.

The League is a voluntary association of shippers, shippers' associations, boards of trade, chambers of commerce, and other entities concerned with the purchasing of freight transportation services. It is the only nationwide organization representing shippers of all sizes and commodities using all modes of transportation to move their goods in intrastate, interstate, and international commerce. Its members, directly or indirectly, are responsible for the routing of about 80 percent of the nation's commercial freight.

The League fully and actively supports strong measures to assure that our nation's domestic and international commerce moves safely via all modes of transportation. This support is reflected in its policies, its legislative and regulatory activities, as well as in its private-sector initiatives.

League policies are the basis for the organization's advocacy activities on freight transportation. They are developed through our committee structure, and reviewed and approved by the membership. Two of our policies are of particular relevance to these hearings.

League Policy L-6 states our support for the strict enforcement of maximum highway load size and weight limitations, penalties for violations, and shipper/carrier cooperation in fostering safe transportation practices.

League Policy L-3 states the League's preference for a private sector task force approach to resolve safety-related issues that include shipper, carrier, and other affected interests. Attached as Appendix A to our written testimony is a listing of the League policies involving transportation safety matters.

The League and its members also have participated in numerous safety related rulemakings and other initiatives before federal and state authorities. Among them are proceedings addressing detailed hazardous materials incident reports (HM-36B), emergency response communication standards (HM-126C), enforcement procedures (HM-138A), performance oriented packaging standards (HM-181), and highway routing (HM-203). In addition, the League has helped secure passage of each of the highway safety measures enacted by Congress during the 1980s.

We also engage in cooperative efforts with carriers to help promote and enhance a safe transportation industry. The League and the American Trucking Associations jointly produced a brochure and videotape entitled "Yield to Safety." This program encourages safe operating practices for shippers and carriers. Development of a training manual currently is under consideration.

Working with the ATA, the League also produced the Shipper/Receiver-Carrier Code of Ethics, which promotes improved safety by outlining the rights and responsibilities of each party in a transportation transaction. Copies of the Yield to Safety brochure and Code of Ethics are provided as Appendix B to this testimony.

The controversy over international containers is not new. More than two years ago, the League and ten other organizations requested the Federal Highway Administration to direct the Transportation Research Board of the National Academy of Sciences to include this issue in its on-going study authorized by the 1987 highway reauthorization law.

This request would have directed the TRB to analyze the scope and extent to which international marine shipping containers affect pavements, bridges, highway revenue and cost responsibility, highway safety, and other related matters. A copy of the March 29, 1988 letter is provided as Appendix C to our written testimony.

In reply to the 1988 request, the then deputy-administrator of the Federal Highway Administration agreed that the issue was indeed important and that our request had merit. He reported that the TRB representatives were in contact with the Maritime Administration and had discussed the possiblity of a separate policy study on overweight containers. However, FHWA took no action.

To date, the only "study" on the container issue was conducted by the Federal Highway Administration. Released in March 1989, it indicated that a potential problem with overweight containers might exist. However, the Federal Maritime Commission found that the FHWA study does not provide the information needed to craft effective and appropriate governmental actions. This finding was one of the reasons it rejected petitions to alter the use of container rates.

It should be noted that the FHWA study used the Journal of Commerces PIERS Master File. This file consists of a random sampling of data taken from import manifests and export bills of lading for containerized cargo freight moving through U.S. ports.

PIERS's main purpose is to allow business and industry to track how freight is flowing in foreign commerce. It does not verify manifest or bill of lading data. It merely reports it. In other words, the study was conducted without ever having weighed a single container.

In addition, the FHWA study failed to determine whether "potentially" overweight containers actually moved over the nation's highways or whether these containers instead moved by other transportation modes where weight is not an issue. The FHWA study also did not determine whether the freight moved in areas where state and/or local jurisdictions allow loads in excess of 80,000 pounds.

The FHWA study fails to take into account that there are a wide variety of special state and local permit programs that allow loads of more than 80,000 pounds to be transported. For example, in the state of Maryland, a trucker can obtain a permit that allows it to haul containers up to 90,000 GVW over certain designated roads.

The failure of the FHWA's study to take these matters into account casts serious doubts on whether the "potential" problem is as extensive as the study seems to suggest. It also prompts the League to question the use of the PIERS data, and to again urge that a new, more balanced study be undertaken.

Indeed, the League believes that the FHWA shares our and others' concerns about the study's validity. In its report, the FHWA acknowledges that the results of its analysis is "expressed in terms of potentially overweight container movements because of the variety of State and municipal highway weight limits that may allow vehicles to transport these containers under special operating permits and/or 'grandfathered' weight limits that exceed the Federal Bridge Formula."

"Without a comprehensive database on movements by container-carrying trucks in the U.S.," the FHWA added, "It is not possible to estimate the number and the distances of highway trips by these vehicles, or to estimate the amount of damage that these vehicles generate for highway pavements and structures."

Before enacting new laws, the League urges that a comprehensive and expedited study be undertaken to analyze the actual movements of these containers. We believe that an appropriate authority, such as the Transportation Research Board, General Accounting Office, or some other recognized independent body, should be directed to analyze the problem. We also urge that appropriate funding be authorized for the project.

Intermodal container movements are critical to the efficient flow of commerce. They are an important factor in determining the competitiveness of U.S. products in domestic and international commerce. Given their important role, the League believes Congress, the Department of Transportation, and other decisionmakers should have the type of data needed to make informed decisions in this area. In other words, we first need to seek objective data so that an effective response can be fashioned to any documented problem.

With respect to regulatory developments, the League would note its concurrence with the Federal Maritime Commission's recent decision concerning the use of container rates and maximum cargo limits. The decision responded to petitions filed by two ocean conferences and the American Trucking Associations, and purportedly were aimed at resolving the overweight container issue.

The first petition, filed by the TransPacific Westbound Rate Agreement and the ATA, asked the FMC to prohibit ocean carriers from offering "per container" rates on selected cargoes. It maintained that these rates create an economic incentive for shippers to maximize the loading capacity of each container, which, for certain commodities, could result in the overloading of containers so that they exceed federal highway weight limitations.

In commenting on the petition, the League vigorously supported enforcement of all reasonable safety regulations and practices, including fostering voluntary compliance with governmental highway weight limitations. However, we questioned the FMC's jurisdiction to regulate highway safety. We believed that the proposed prohibition against per container weights would impose anticompetitive pricing restrictions on individual carriers under the guise of regulating safety. We also stated that the petition did not show that container rates are a form of pricing which violates the provisions of the 1984 Shipping Act.

The second petition was filed by the South Europe/USA Freight Conference and the ATA. It urged the FMC to establish maximum cargo weights for containers. The League opposed the petition's proposal as being outside the scope of the FMC's authority and an inappropriate exercise of its power.

In ruling on the petitions, the FMC denied the requested changes. The agency found that the PIERS database was inadequate to justify altering current practices. It also found that the proposed solutions well may not solve the alleged problem, and could create inefficiencies, discourage technological innovations, and inhibit new safety developments. The FMC added that adopting the petitions would interfere with local efforts to facilitate container movements and upset the current balance among federal, state, and local jurisdictions.

To help resolve this matter, the League earlier this year initiated efforts to develop a cooperative solution to the overweight container issue. This effort includes the participation of motor carriers, maritime liner carriers, ports, shippers, and other affected parties, with the stated objective of reaching a comprehensive solution responsive to the problem.

In January the League took the first step in organizing this private sector task force. Under my personal direction, invitations were sent to individuals from these groups to participate in a free-ranging discussion of the problem. This discussion was aimed at developing an effective action program.

Known as the International Container Loading Task Force, the group held its first meeting on March 15 in Chicago, Illinois. One of the group's first actions was to agree that a mutually acceptable approach to the overweight container question was a far better alternative than one formulated without significant private-sector input.

The task force identified several possible approaches to solving the problem, and agreed on the following mission statement: "To develop national solutions to promote the safe, lawful and economic movement associated with the maximum loading of containers in international trade."

At its second meeting last month in Atlanta, Georgia, the task force began exploring which elements should be included in the action program. After considerable discussion, the task force agreed that this approach should include: (1) greater police enforcement through random inspections; (2) a weight inspection program at the ports on import and export movements; (3) stringent penalties to discourage the overloading of containers; (4) tolerances for highway weight limits; (5) development of a shipper/carrier educational program on equipment and weights; and, (6) further study to quantify the magnitude and nature of overweight container movements.

While the task force has made considerable progress in outlining the areas that should be included in solving the problem, an important question still remains. It centers on which of these steps, if any, will require legislation or regulatory action. The answer to this question depends on the future work of the group. It is scheduled to meet July 20 in Los Angeles.

Once the task force's deliberations are completed, we anticipate that each of the member groups independently will evaluate the recommendations. As for the League, these recommendations will be sent to our appropriate committees which will, in turn, forward their recommendations to the League's leadership.

In the final analysis, we believe the most responsible solution to this issue rests with cooperation among all the parties involved in the transportation chain. The League will continue its efforts to work with industry and government in devising a program which promotes the essential elements of safety and compliance with the federal highway weight laws. We stand ready to cooperate, as we have in the past, in developing solutions which effectively addresses this complex problem.

On behalf of the League, I want to thank the subcommittee for the opportunity to present the views of the shipping public. I am prepared to answer any questions. Thank you.

APPENDIX A

## PERTINENT LEAGUE TRANSPORTATION POLICIES

A-2. Minimum Regulation. A free marketplace is preferable to regulation. Regulation should be limited to provide adequate and safe transportation or to protect shipper or public interests where adequate competition does not exist.

B-1. Motor Carrier Deregulation and Freight Forwarder Deregulation. (1) The League favors complete deregulation of motor carrier and freight forwarder transportation except safety and insurance and liability for cargo loss and damage. (2) The League supports: (a) legislation to prevent the states from regulating deregulated motor carriers, and (b) legislation to deregulate intrastate motor carriage except for safety, insurance and liability for cargo loss and damage. (3) The League's position on deregulation of motor carriers and freight forwarders specifically acknowledges that higher standards of safety and departures from established insurance and liability standards may be negotiated by carriers, shippers and/or receivers.

E-1. Availability of Operating Rights. Any applicant should be granted operating authority by the controlling regulatory agency once the fitness test has been passed and applicant has demonstrated a willingness and ability to provide a service for the requested authority. The fitness test should include evidence of financial stability, adequate insurance and a sound safety program.

E-3. Private Carriers. The League opposes any restrictions on the operations of private motor carriers except for safety and insurance regulations.

H-5. State Vehicle Weight Law Violations. The League condemns the practice of violations of state vehicle weight laws by anyone, and recommends that its members cooperate actively in the elimination of this abuse.

H-7. Size and Weight Laws. The League supports liberalization and uniformity of size and weight laws, including multiple units, based upon sound engineering and safety principles.

L-1. Transportation Safety Rules and Regulations. The League favors reasonable transportation safety rules and regulations covering all types of carriers. Safety rules and regulations shall be based on adequate information concerning the need for and consequences of such action.

Regulatory action shall not be undertaken unless the potential benefits to society for the safety regulation outweigh the potential costs to society.

L-2. Safety Jurisdiction. The League favors the Department of Transportation having exclusive jurisdiction over transportation safety within the United States.

L-3. Transportation Safety Task Force. The League favors the task force approach to the formulation of proposed transportation rules affecting safety, prior to the publication of the proposed rule in the Federal Register. Such as task force would, as appropriate, consist of carriers, shippers, transportation equipment manufacturers, and personnel administrative agencies.

L-4. Safety of Private Tracks and Spurs. The League endorses the principle that private tracks and spurs should be maintained in a safe condition without mandatory Department of Transportation safety regulations.

L-6. Enforcement of Highway Transportation Safety Rules and Regulations. The League supports: (1) strict enforcement of all safety rules and regulations in regard to vehicle condition, maximum load size and weights, speed limits, driver's hours of service and controlled substances; (2) penalties for violations of safety rules and regulations that will discourage violations and remove violators and/or their equipment from the nation's highways; and, (3) shipper receiver cooperation with carriers for making informed, good faith efforts to comply with all rules and regulations governing safe transportation practices.

APPENDIX B

## Shipper/Receiver-Carrier

# CODE OF ETHICS

**Shippers/receivers and motor carriers agree that it is in their mutual interest to subscribe to the following guidelines to govern their relations.**

## Shippers/Receivers will:

**1. Treat drivers with courtesy.**

- Provide drivers access to restrooms, water and other comfort facilities.
- Assist drivers when there is need.
- Encourage and accept driver's suggestions on service improvement opportunities.
- Promptly load/unload trucks that arrive within the scheduled time. Cooperate in loading/unloading trucks that arrive early or late or without an appointment.
- To the extent possible, reschedule appointments if circumstances change.
- Keep docks as clear as possible in order to prevent driver delays.
- Allow drivers to clean trailers and discard dunnage that was a part of the load being delivered as long as disposal facilities are available.
- Never solicit improper gifts or favors in return for preferential treatment in loading or unloading of equipment or in routing of freight.

**2. Assure safe practices are followed.**

- Shipments must be within legal load limits.
- Assure that hazardous materials are packed in proper containers, loaded and stowed, proper shipping documents prepared, and labels applied to containers and vehicles in conformance to hazardous materials transportation regulations.

**3. Establish reasonable transit time requirements.**

- Cooperate with carrier in establishing transit time requirements.

**4. Negotiate honestly with carriers.**

- Carrier selection and routing decisions will be based upon service/price/performance benefits to the shipper and its customers.

## Carrier drivers will:

**1. Treat shipping and receiving dock personnel with courtesy.**

- Keep scheduled appointments or call ahead and request a changed appointment.
- Explain the need to unload vehicles promptly, especially if inconvenient to the shipper/receiver.
- Place vehicles to the extent feasible, at the locations requested by the shipper/receiver.
- Keep the area around the vehicle clean; discard trash, packing, etc., only in approved containers with the permission of the shipper/receiver.
- Treat shipper/receiver personnel with courtesy and respect.
- By appropriate dress, look and act as professionals.
- Never offer improper gifts or favors in return for preferential treatment in loading or unloading of equipment.

**2. Maintain safe practices.**

- Do not overload equipment.
- Inspect and carefully load hazardous materials; assure that the vehicle bears placards in accordance with hazardous materials transportation regulations.
- Operate the motor vehicle in accordance with DOT, Safety, and all other regulations.
- Observe shipper/receiver restricted areas, safety practices and any requirement for wearing protective devices on plant premises such as hard hats, safety glasses, etc.
- Inspect all vehicles' cargo and load-securing devices prior to departure and periodically during the course of transportation and cause any adjustments to be made necessary to maintain the security of the load unless inspection is impracticable.

## Carrier personnel will:

**1. Negotiate honestly with shippers.**

- Strive to build a solid business relationship with shipper/receiver.
- Sell services that the carrier knows will be committed by carrier management.
- Maintain the lawful confidentiality of shipper data.
- Quote transit times that can be achieved within driving time regulations and speed limits.
- File promptly with the appropriate regulatory agencies agreedto rates required to be filed in tariffs.
- Provide clean, watertight and good condition equipment in accordance with commitments.

**2. Give clear instructions to drivers as to service expected by shippers and receivers of freight.**

- Be sure drivers understand and are prepared to meet any unique service requirements and are trained and knowledgeable of the products they handle, and how to act in the event of an emergency.

# TO SAFETY

## Carriers and Shippers Cooperating for Safety

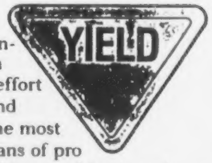
Truck transportation generates over $200 billion in revenue and 7.4 million jobs annually. But what is equally satisfying, truck transportation logs 138 billion safe miles across this country's roads and highways each year.

As part of the philosophy to demand, and respect, safe travel across the country, the American Trucking Associations and the National Industrial Transportation League are jointly addressing areas which offer the greatest potential for improving highway safety, and educating both shippers and carriers on current safety laws and the importance of complying with them.

It pays to adhere to these requirements. The pressures of competition and the accidents which may result cost companies in:

- Lives lost or shattered;
- Freight lost, damaged, or delayed; and
- Freight rates increased to cover carrier losses and insurance premiums.

Carriers and shippers have a legal and moral obligation—and an economic incentive—to assure observance of state and federal safety requirements. The conduct of business on the nation's highways is a privilege and not a right, with our first obligation being the safety of all highway users.



ATA and NITL are convinced that a cooperative effort of carriers and shippers is the most effective means of promoting the ultimate objective of accident free transportation.

To this end, through this effort and others, we hope to inform readers about methods of shipping and transporting materials that bring safety to the forefront of operations and management. Compliance with these rules result in safe and legal truck operations. Safety is GOOD BUSINESS.

## SPEED LIMITS

The maximum speed limit in most areas is 55 mph, but long-haul vehicles do not average such speeds. Weather conditions, traffic and terrain significantly affect the time required for delivery, as do variations in speed limits from one jurisdiction to another.

SPEED
LIMIT
55

Shippers and carriers must be mindful of variations and not commit to delivery schedules which can be made only by violating speed limits. Emphasis, when setting delivery times, should be on the average speed a vehicle can safely and legally maintain.

- Excessive speed increases truck related accidents resulting in fatalities and injuries, and damage to freight. It also wastes fuel, increases wear and tear on equipment, and causes splash and spray problems for other drivers.
- New laws impose heavy penalties on drivers who speed. They are more likely to lose their licenses and to be suspended from their jobs.

Compliance incentives:

- Delivery schedules uninterrupted by accidents.
- Potential for freight damage minimized.
- Improve safety records and insurance rates for carriers.

- Lower costs and more competitive rates for carriers and shippers.
- Reduced potential for state and local restrictions on trucks.

Compliance action:

Carrier personnel should not accept shipments if a delivery schedule cannot be met legally. The problem should be explained to the shipper representative, with a request for an adjustment in delivery time.

# HOURS OF SERVICE LIMITATIONS

No amount of goods is worth the cost of an accident caused by a delivery schedule which requires a driver to operate excessive hours and to violate federal regulations which limit driving time to 10 hours.

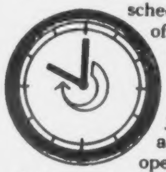
- Drivers who exceed hours of service limits may become fatigued and fall asleep at the wheel, resulting in an accident, deaths, injuries, property damage, and damaged freight.
- A driver violating hours of service limits to meet a shipper's unreasonable delivery schedule is subject to being placed out of service at roadside inspections by state and federal officials, delaying freight delivery.
- Fines for violations of hours of service rules may cost a carrier $500 for each day of a violation. Willful and knowing violations can result in fines of $2,500 per violation, and a maximum of $25,000. Fines increase carrier costs and freight rates.

**Incentives to compliance:**

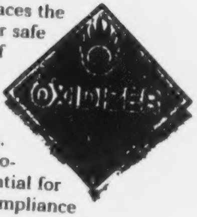
- Deliveries made on schedule.
- Losses minimized due to drivers out of service.
- Fines avoided.
- Rested drivers transporting goods safely.

Compliance action

Carrier personnel should not accept a shipment if the delivery schedule requires hours of service violations. Contact should be made with a shipper official to adjust the schedule and allow legal operations. In setting delivery schedules, shippers must be reasonable and consider carrier limitations imposed by law and safe operating practices.



# SHIPPING HAZARDOUS MATERIALS



Federal law places the responsibility for safe transportation of hazardous materials equally upon shippers and carriers. Shipper/carrier cooperation is essential for safety, and for compliance with state and local requirements and restrictions, such as limits on travel times and on routes that can be used.

- Carriers cannot transport hazardous materials safely and in compliance with regulations unless the shipper provides properly prepared shipping papers and packages, and appropriate placards.
- Accidents involving hazardous materials result in greater losses, and in restrictions on such transportation in the future.
- Violations car result in civil penalties up to $10,000 and criminal penalties up to $25,000 for knowing and willful violations.

Incentives for compliance:

- Potential for serious accidents is minimized.
- Avoidance of civil and criminal penalties.
- Less potential for state and local restrictions.
- Less chance for delay due to shipments being placed out of service.

**Compliance action:**

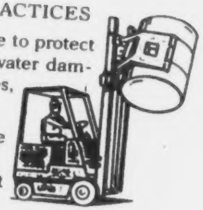
Carrier personnel should not accept improperly prepared shipments. They should contact a shipper official and explain what is needed for compliance.

Shippers must be knowledgeable about hazardous materials requirements, and ensure that all shipments are in compliance.

# SAFE LOADING

Proper loading of freight is essential for safety and minimizes the potential for freight damage. Trucks and trailers should be in safe condition and free of defects that can damage freight. Improper loading or unreasonable loading requests by shippers can result in accidents, injuries, deaths, and expensive lawsuits.

LOADING PRACTICES



- Check vehicle to protect freight from water damage, punctures, tears, etc.
- Cargo must be properly distributed—front of the trailer should be heavier than the rear. Load heavy materials near the floor to lower the center of gravity and to protect freight from damage.
- Block, brace or tie down freight in accordance with requirements in the Federal Motor Carrier Safety Regulations.
- Construction and other heavy equipment have special requirements. In all cases, follow state and Federal loading requirements.

Incentives to compliance:

- Damage to equipment and goods in transit avoided.
- Potential for accidents and claims against shipper and carrier reduced.
- Expensive lawsuits and damage awards minimized for shippers and carriers.
- Freight claim administrative work reduced.

**Compliance Action:**

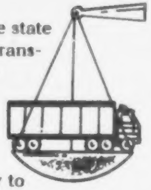
Don't use equipment or drivers that appear unsafe.

Adhere to loading practices that will assure the safety of the equipment and its load.

# SIZE AND WEIGHT LIMITATIONS

**Federal and state regulations control vehicle gross weights, weight distribution, length, width, and height of equipment. These limits must be complied with or heavy fines will be imposed on carriers. Carriers and shippers may be found liable and subject to expensive judgments resulting from accidents, and cargo loss.**

- **Weight Limits: As a general rule: single axle 20,000 lbs.; tandem axle, 34,000 lbs.; gross weight 80,000 lbs. Some states have exceptions.**
- **Lengths, widths, heights: 102" wide trailers are allowed on interstate highways but are limited in some states on primary and secondary roads. Twin trailers and 48' long trailers are also limited** off of interstates by some states. These vehicles should be scheduled only for authorized routes. 13' 6" is a generally accepted height. Routes that have low overpasses must be identified and avoided.



- **Carriers must have state issued permits to transport loads that are overheight, overwidth or overweight. Carriers must be allowed to retain flexibility to select equipment and routes that are legal.**
- Civil violations can range from $100 to $40,000. Excessive overweight may result in criminal action.

**Incentives to compliance:**

- Avoid size and weight fines and possible impoundment of vehicle and load.
- Deliveries made on schedule.
- Reduced potential for access restrictions.
- Reduced highway deterioration and maintenance costs.

**Compliance Action:**

Shippers must not tender shipment that doesn't meet state size and weight limits. Carriers must refuse a load that obviously exceeds limits.

# INFORMATION SOURCES

For further information on this jointly-sponsored educational program, contact the following:

**American Trucking Associations**
2200 Mill Road
Alexandria, VA 22314-4677
(703) 838-1797

**National Industrial Transportation League**
1090 Vermont Avenue, NW, Suite 410
Washington, DC 20005-4905
(202) 842-3870

Publications which may be of assistance on specific requirements described in this brochure include:

Federal Motor Carrier Safety Regulations. ATA Safety Department, 1987.
Guide to Oversize/Overweight Permits. ATA State Laws Department, 1987.
Handling Hazardous Waste. ATA Safety Department, 1987.
Summary of Size and Weight Limits. ATA State Laws Department, 1987.

(ATA publications ordered by calling 1-800-ATA-LINE or collect 703-838-1754.)

APPENDIX C

FOUNDED 1932

National Association of Stevedores

2011 EYE STREET, N.W. · SUITE 801 · WASHINGTON, D.C. 20006 · 202 296-2810

March 29, 1988

Mr. Robert Farris
Deputy Administrator
Federal Highway Administration
Department of Transportation
Room 4218
400 7th St., S.W.
Washington, D.C. 20590

Dear Mr. Farris:

On behalf of the attached list of companies and organizations I am writing to request that the Federal Highway Administration (FHWA) direct the Transportation Research Board of the National Academy of Sciences (TRB) to enlarge the ongoing study authorized by section 158 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (P.L. 100-17) to include an analysis of the scope and extent that international marine shipping containers contribute to the "effects" on pavements, bridges, highway revenue and cost responsibility, and highway safety and other matters set forth in subsection (b) of section 158 of the Act.

Our group is requesting this because of our concern about the alleged overweight vehicle problem. We know there are differences among the weight limits for rail, water and highway transportation. And we know that U.S. motor carriers are being fined for transporting overweight vehicles on U.S. highways. However, none of us is aware of the scope and extent of the problem, or the proportionate share of international marine shipping containers on the total effects on the nation's highways and bridges.

We recognize that this is an important issue and we all wish to see it addressed in an equitable and objective manner. Some proposals have been advanced which would require substantial investment in new equipment and disruptive changes in marine terminal operations. Also, several regional studies have been and are being completed about this issue. However, we believe that it is now necessary for an independent and objective analysis by the TRB of all available information before the appropriate and acceptable resolution of this issue can be found. We believe that the section 158 study directed by Congress is the best vehicle to lead to such resolution.

Accordingly, we respectfully request that you direct the TRB to enlarge the ongoing section 158 study to include the issue of "overweight vehicles" and hereby express our willingness to assist the TRB in any way possible.

Sincerely yours,

Thomas D Wilcox

Thomas D. Wilcox
Executive Director and
General Counsel

TDW/kk

Enclosure

cc: Honorable James Burnley, Secretary of Transportation

Honorable Quentin Burdick, Chairman, Senate Committee on Environment and Public Works

Honorable Glenn Anderson, Acting Chairman, House Committee on Public Works and Transportation

Honorable Edward J. Philbin, Acting Chairman, Federal Maritime Commission

Honorable John A. Gaughan, Maritime Administrator, Maritime Administration

Mr. Thomas B. Deen, Executive Director, Transportation Research Board, National Research Council, National Academy of Sciences

## List of signatories to March 29, 1988 letter to Mr. Robert Farris Deputy Administrator, Federal Highway Administration

1. American Association of Port Authorities
2. American President Companies
3. Evergreen International Corporation
4. Institute of International Container Lessors
5. Maersk Container Service Company, Inc.
6. National Association of Stevedores
7. National Industrial Transportation League
8. National Maritime Safety Association
9. Sea Containers America, Inc.
10. United Shipowners of America

STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY GEORGE DEUKMEJIAN, Governor

DEPARTMENT OF TRANSPORTATION
P. O. BOX 942873
SACRAMENTO, CA 94273-0001
TDD (916) 445-5945
(916) 323-4200

Ms. Hoffman and Mr. Van Berkle

TESTIMONY BY THE

# CALIFORNIA DEPARTMENT OF TRANSPORTATION

before the

# INVESTIGATIONS AND OVERSIGHT SUBCOMMITTEE
HOUSE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

relating to

# OVERWEIGHT INTERMODAL CONTAINERS

June 27, 1990

## INTRODUCTORY COMMENTS AND POLICY CONSIDERATIONS

Any action taken at the federal level to resolve the overweight container issue will have a significant impact on California. For United States ports, the Ports of Long Beach, Los Angeles, and Oakland are in the top four ports for container movements. The Department's concern with the issue of overweight containers stems from the pavement and bridge damage that they inflict on public roads and safety problems resulting from increased stopping distance, decreased vehicle control, and increased stress on the mechanical systems of the truck and chassis.

Based upon a perceived problem with overweight intermodal shipments, the California Legislature in 1988 required the California Department of Transportation, in cooperation with the California Highway Patrol, to develop a plan to install scales at major intermodal terminals to enforce road weight limits on intermodal containers and piggyback trailers. The legislation required the plan to be developed in cooperation with an advisory task force representing labor, marine terminal operators, ports, railroads, shippers, steamship lines, and the trucking industry. With the concurrence of the Legislature, the task force investigated other potential solutions in addition to scales which could have the same weight impacts but do it more effectively.

The task force reached the following conclusions.

1. An intermodal container or piggyback trailer may meet the weight limits for a ship, rail car, or crane; but an overweight problem arises when it is placed on a truck and required to meet truck axle load limits.
2. The intermodal transportation system is international in scope and involves many parties, and this makes it difficult to assign the responsibility for an overweight intermodal shipment to the party primarily responsible.
3. Without a consistently applied nationwide enforcement program, truck operators, railroads, and ocean carriers must either transport what is tendered by the shippers or accept the loss of business under very competitive market conditions.
4. Truck operators are the parties being cited for overweights, but they are often not responsible for the loading of intermodal shipments. But when truck operators have knowledge of the shipment being overweight, they must accept some of the responsibility for transporting overweights on a public road.
5. Removing some of the cargo from an overweight container to reduce its weight may cost more than the carrier earns in transporting the container. These relative high costs in complying with public road weight limits leads to decisions being made throughout the intermodal transportation system on the basis of economics, regardless of the damage to public roads.

The study's task force pointed out that the following factors must be taken into account:

1. Any proposed solution must consider the efficient, economic movement of cargo

2. Overweight intermodal shipments are a national problem. The findings and recommendations of this study need to be tied into similar efforts throughout the nation and at the federal level to avoid the economic consequences from the diversion of trade to ports in other states.

3. An even playing field needs to be maintained. If one railroad, port, or marine terminal operator is required to inform their customers that their containers will be weighed and that their loads must be legal as to highway loads, then all players must do the same.

Considering the identified factors, the task force concluded that the primary options to be implemented should be those that authorize the access to and use of intermodal industry private weight records. These options are estimated to be more cost effective than an increase in the level of mobile road enforcement or the construction of new scale facilities, and they should produce less disruptions and delays for intermodal operations.

## GENERAL STRATEGY

As with all modes of transportation, the decision to overload or not to overload is an economic decision. Thus, any proposed solution in the intermodal container area should have the objective of changing behavior by applying appropriate economic measures on the responsible parties. Economic incentives to transport overweight shipments should be removed or economic disincentives of sufficient magnitude should be applied on the responsible parties. If sufficient economic disincentives are applied at the proper points, corrective actions may possibly be reflected back up the chain to the responsible party for originating the overweight shipment. This will tend towards a self-policing process as long as the economic disincentives continue to be applied.

The issue then comes down to what type of economic measures are to be utilized and at what points in the intermodal chain should they be applied. To answer these questions, the task force broke down the issue into export and import shipments. Based on the Federal Highway Administration's analysis of the Port Import/Export Reporting Service (PIERS) data base produced by the Journal of Commerce, the following conclusions were drawn:

1. For containers moving through all United State ports from October 1987 through September 1988, the potential overweight violation rate was 39% for exports and 26% for imports.

2. For the Pacific Coast ports, exports are 79% of the potentially overweight containers.

Therefore, the commonly quoted statement that imports are the major part of the problem is not correct, and exports are a much larger part of the problem on the Pacific Coast than in other parts of the United States.

## EXPORTS

Export containers on trucks are weighed for gross vehicle weight at marine terminal gates so the container can be properly stowed onboard a ship. The container weight is dervived by subtracting the tare weights of the truck tractor and chassis from the gross vehicle weight. Exports are coming from diverse points to a central location.

Considering these operational characteristics, the task force report to the California Legislature recommended that the California Highway Patrol be given authority to access private export weight records generated at marine terminals. These records typically include information on the carriers, shipper/consignee, type of commodity, container size, truck gross scale weight, tare weights for the truck tractor, chassis and container, and a calculated cargo load weight. An analysis would be performed on this information to identify overweight trucks. This analysis occurs after the trucks have traveled on public roads. Legislation would be required to authorize the California Highway Patrol to access the private weight records and to define a civil cause of action and civil penalty for the prosecution of overweight cases discovered by means of this export records search. Using a computer data base of these cases, the habitual violator could be prosecuted for an unfair business practice cause of action under the California Business and Professions Code.

## IMPORTS

Imports are not usually weighed at the United States marine terminal. They are leaving a central location for diverse points.

Considering these operational characteristics, the report to the California Legislature recommended that the California Highway Patrol be given authority to access import documents to select potentially overweight trucks for weighing at a public static scale. Import documents, such as a ship's manifest or bills of lading, contain as a minimum an estimated container weight. Only those vehicles suspected of being overweight and which would travel on public roads would be required to be weighed. If the actual weighing reveals an overweight truck, the truck axle spacings will have to be adjusted or the cargo load lightened to bring the overweight truck into compliance with the appropriate load limits. This selective weighing process is a preventive measure. Legislation would be required to authorize the California Highway Patrol to accesss private import documents and to define a criminal penalty for those trucks not complying with the selective weighing procedures. A precedent has been set for this selective approach through the procedures developed by the U. S. Customs Service for the inspection of containers for drugs.

Since submitting the report to the California Legislature, the Department received a request from California Assemblyman Richard Katz, Chairman, Assembly Transportation Committee, to develop language for the proposed statutory changes so that these may be considered for introduction as a bill in 1991.

## INTERMODAL INDUSTRY ACTIONS

Enforcement efforts are not the only answer, and the report to the California Legislature also summarized ongoing intermodal industry actions. These actions should help reduce the number of overweight containers. Intermodal industry actions include educational, regulatory, and facility improvement activities:

- Educational activities include educating all intermodal parties on public road legal weight limits and how the number of overweights may be reduced through the use of appropriate chassis equipment. The use of an appropriate chassis should be especially helpful in reducing the number of violations of the bridge formula.

- An example of a regulatory action, though rejected by the Federal Maritime Commission, is the intermodal industry's petition to eliminate tariffs on a per container basis for the higher density commodities. The Department submitted comments to the Federal Maritime Commission expressing support for the petition.

- California ports, in cooperation with local governments and railroad companies, are planning for or constructing on-dock or in-port rail facilities. These facilities will reduce the need for the drayage of containers on public roads. An example of this cooperative effort is the joint powers agreement entered into by the City of Long Beach and the City of Los Angeles to improve the railroad and highway facilities in what is known as the Alameda Street Corridor linking the Port of Long Beach and the Port of Los Angeles to rail intermodal terminals in the central Los Angeles area.

## RESPONSE TO QUESTIONS

Question: What is your reaction to the two overweight container petitions filed before the Federal Maritime Commission (P3-89 and P4-89) and the Commission's decision to deny them?

The two petitions submitted to the Federal Maritime Commission would have reduced some of the economic incentive to stuff containers to their volumetric capacity. This may have provided some relief, but the provisions of the petitions would not have provided a total answer.

Question: The Federal Highway Administration analyzed the Journal of Commerce PIERS data on overweight container movements in a March 1989 report. What is your opinion of that analysis, and is additional research necessary?

The Federal Highway Administration's analysis of the PIERS data base is the only comprehensive data analysis that we are aware of. No actual weighing of trucks loaded with containers was performed, and we recognize the extensive staff requirements to obtain a comprehensive data base on actual weighings. This is the reason our study recommended that advantage be taken of the weighings generated at marine terminal gates.

If additional research is needed to quantify the size of the problem, we would recommend that the private records of the actual weighing of trucks , such as those we described for trucks transporting export containers, be obtained and analyzed.

Question: What current or evolving transportation/economic factors have contributed to the overweight container problem?

The truck portion of the truck-rail-ship intermodal system is the inherent weak link due to the necessary weight limits placed on trucks when traveling on public roads. We are now seeing a trend to 45, 48, and even 53-foot containers as the intermodal industry seeks to penetrate the domestic freight market. These larger containers present a continuing potential for an increase in overweights.

For the issuance of special permits for the movement of overweight containers, the Federal Highway Administration has adopted the position that the classification of a container as a divisible or nondivisible load is a determination best made at the state level. If a state determines that a container is in the category of nondivisible, then it may issue a special permit without further federal involvement. The California Department of Transportation has concluded that a container is a divisible load, and we will not issue special permits to transport overweight containers. Depending on the economic and geographic characteristics of neighboring states, a state's decision on the divisible/nondivisible issue may affect its competitive position for container traffic.

Question: What solutions would you propose to resolve the overweight container problem, and would you recommend administrative and/or legislatives remedies?

The solutions we have described in our testimony today are defined in more detail in the report to the California Legislature, and we submit that report, Overweight Intermodal Containers and Piggyback Trailers, as part of our testimony. As well as legislative action being undertaken by the California Legislature, we would suggest that the report and our testimony be given consideration as models for future actions at the federal level.

Before the

UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
SUBCOMMITTEE ON INVESTIGATIONS

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## Statement of the
## OWNER-OPERATOR INDEPENDENT DRIVERS ASSN., INC.

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Investigative Hearing on

Overweight Containers

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K. MICHAEL O'CONNELL
Counsel

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June 26, 1990

JAMES J. JOHNSTON
President
Owner-Operator Independent
Drivers Assn., Inc.

Of Counsel:

COLLIER, SHANNON & SCOTT
3050 K Street, N.W.
Washington, D.C. 20007
(202) 342-8400

**Before the**

## UNITED STATES HOUSE OF REPRESENTATIVES

## COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION SUBCOMMITTEE ON INVESTIGATIONS

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**Statement of the**
**OWNER-OPERATOR INDEPENDENT DRIVERS ASSN., INC.**

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## Investigative Hearing on

## Overweight Containers

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**K. MICHAEL O'CONNELL**
**Counsel**

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Mr. Chairman, Committee members, Committee staff, my name is Michael O'Connell, and I am counsel to the Owner-Operator Independent Drivers Assn., Inc. ("OOIDA" or "Association"). OOIDA is the national trade association representing the interests of the nation's more than 350,000 independent truck owner-operators. Headquartered in Oak Grove, Missouri, OOIDA has over 14,000 members that operate more than 25,000 trucks in all 50 states. The Association is the second-largest trade association in the trucking industry.

Owner-operators are small business men and women who own and operate individual class 7 and 8 trucks and small truck fleets. Collectively, owner-operators are responsible for approximately 40 percent of the intercity truck traffic in the United

States.They engage in the transportation of commodities exempt from the regulations of the Interstate Commerce Commission or lease their equipment and services to private and for-hire motor carriers. Owner-operators are also the entities that are primarily responsible for the movement of intermodal containers and trailers transported by rail.

## COMMENTS OF THE ASSOCIATION

The issue of overweight containers and piggyback trailers on the nation's highways is a very serious one. The Federal Highway Administration has discovered that a shockingly large number of these containers offer the potential to violate current highway vehicle weight laws. Overweight containers raise both economic and safety concerns. Contrary to the assertions of certain shipper interests, the issue of overweight containers does not involve international competitiveness -- it is a problem that is rapidly destroying our infrastructure, it is unsafe, and it is illegal. The Congress should act quickly and forcefully to address the problem.

### The Overweight Container Problem Is Substantial

A 12 day sample of shipping data, conducted by the Federal Highway Administration, indicated that approximately one-third of the containers moving through U.S. ports contained cargos at weights that could cause the vehicles transporting them to violate federal vehicle weight laws.[1/] While this study indicates the *potential* for overweight trucks, the type of chassis most frequently used in the intermodal

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[1/] Federal Highway Administration, "Analysis of Port Import/Export Reporting Service (PIERS) Data to Reveal Potentially Overweight Container Movements on America's Highways," (March 20, 1989) at 5.

transportation industry indicate that these containers are operating in violation of the federal bridge formula. These chassis are not of the type that readily allow for adjustment to satisfy bridge formula requirements.

Overweight containers disproportionately tax the infrastructure. They not only cause increased wear through heavier load applications on highways and bridges, but grossly overweight containers can also cause permanent damage by stretching bridge members such that they do not return to their original shape. Such excess loading severely reduces the life of both pavement and bridges.

In addition to damage to the infrastructure, containers are transported on chassis that are often the most dangerous equipment in the trucking industry. Shipping companies and other intermodal operations generally provide the chassis while owner-operators provide both the power unit and the labor to deliver intermodal containers to their final destination. OOIDA members consistently report that these chassis receive little or no maintenance. When they pick them up, the chassis routinely show layers of cord on tires, have non-functional or incorrectly adjusted brakes, and missing or inoperative marker, clearance and brake lights. The combination of an overweight container placed on an unsafe chassis is a recipe for disaster.

Attachment 1 is a copy of a citation issued by the New York Department of Transportation on a chassis used to haul containers. It indicates six out-of-service violations on a single unit. The violations include brake shoes that "[d]o not move when brake shoes are applied" and a "[b]ild [sic] up of rust" between the brake linings on one shoe. The chassis was hauling a placarded load. OOIDA members report that such violations are commonplace.

## Drivers Have No Control

Drivers are unable to determine with any accuracy the weights of the containers they are hauling. Brakes, suspension and tires affect the handling characteristics and thus the "feel" of the chassis. In containerized freight movements, drivers almost always pick up a different chassis and load each time they enter a port. While it may be possible for the drivers to determine the approximate weights of vehicles that they haul on a regular basis, drivers hauling overweight containers or piggyback trailers are generally pulling the chassis for the first time. Weight can affect the "feel" of a chassis; however, a driver would need experience with hauling the same chassis under different loads to estimate the weight of a given load. Even then, he or she would not be able to estimate within 2-3 tons.

Drivers hauling containerized freight in port operations must line up in order to pick up both chassis and containers. They line up to pick up a chassis on a first-come, first-served basis. They then move the chassis to the proper area to pick up a container. A typical driver will sit in line for approximately 2 hours before picking up a chassis, and possibly as long to pick up a container. If the driver notes a safety defect on a particular chassis and refuses it, he or she must return to the end of the line to wait for another chassis or spend additional uncompensated time getting it repaired. Drivers who refuse an unsafe chassis often are denied loads.

Despite their lack of bargaining power, both the overweight load and the condition of the chassis are chargeable to the driver when he or she takes the vehicle out on the highway. Attachment 2 is an example of an overweight citation. The citation indicates that the driver was overweight by 7,450 pounds. The driver was required to post a bond of $1,347.00 for that citation. The shipper, consignee, and shipping company who received the benefit of the overstuffed container bore no burden while the driver was fined.

As the Committee can well imagine, drivers do not routinely pay fines of this size in order to carry loads that generate revenue of one or two hundred dollars. Attachment 3 contains two owner-operator settlement sheets issued to OOIDA members. Invoice No.25-104323 on the first settlement sheet indicates of a payment of $40.00 while the second, Invoice No. 25-114843, indicates a payment of $20.00. These payments to the owner-operator are "scale fees" which are used to compensate the driver for taking a known overweight container around a scale location. OOIDA members report that such fees are common and wide spread practice in port areas and in areas where traffic in piggyback trailers is extensive.

### Shippers And Consignees In The U.S. Must Bear The Burden Of Fines And Penalties For Overweight Containers

Overweight containers imported into the United States subsidize foreign industries by permitting lower shipping costs. The weights of these containers would make them illegal for domestic companies to ship. Some domestic companies have argued that restrictions on heavily laden containers will place them at a competitive disadvantage with foreign interests. This argument conveniently ignores the fact that there are well established and sound federal weight laws for trucks. If these firms wish to ship heavier shipments, the issue should be addressed in the context of amending existing weight laws. Any such consideration should be carefully evaluated in light of the destruction that overweight containers cause. The Committee should not entertain arguments that certain firms should be allowed to continue to break the current laws in the name of "competitiveness."

Enforcement efforts in the area of overweight containers and piggyback rail cars must be directed towards the shippers and shipping interests that benefit from the shipment of these containers. As noted previously, drivers have little control over the loads that they haul and do not know whether they are overweight. As such, enforcement efforts directed toward them merely penalize them for being in powerless economic circumstances. Overweight containers move in international commerce because they are profitable to shippers and consignees. A workable enforcement policy must make it unprofitable to ship these containers on our highways.

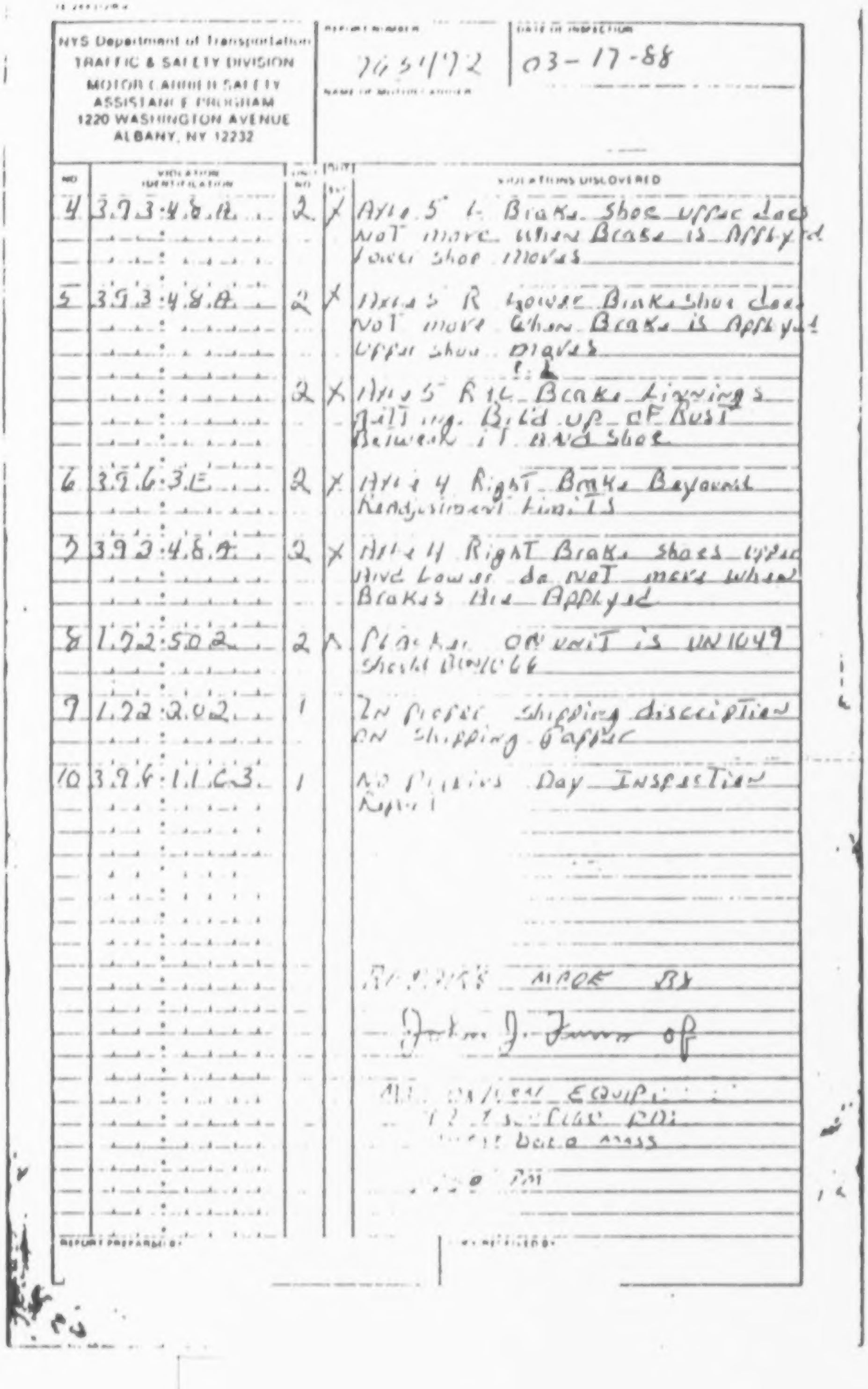
Since deregulation of the trucking industry, shippers have gained vast control over both industry operations and economics. The intense competition for freight gives trucking companies little or no leverage over shippers and others. There is always a competitor waiting in line willing to haul the load at nearly any price, or under any terms. Having enjoyed the benefits of deregulation, shippers must not now be immune from the adverse consequences.

The problem must be addressed at the federal level. The states are already aware of the problem but have done little to correct it. The intense competition among the U.S. ports for freight means that ports, indeed entire states, will be unable to deal with the issue individually as traffic will merely shift to those ports that are willing to tolerate overweight containers. In addition, federal dollars from the federal Highway Trust Fund must pay to repair the damage to the infrastructure caused by these containers.

OOIDA favors vastly increased weight enforcement at U.S. ports and rail head facilities. The Association believes that such enforcement will yield substantial benefits by slowing the deterioration of the infrastructure caused by overweight containers and piggyback trailers. When overweight containers and piggyback trailers are detected, penalties should be directed towards U.S. shippers and consignees. These parties are the ones that are generating the pressure to overload containers. Further, the movement should be stopped and the container unloaded to place it within legal limits.

Thank you for the opportunity to present the views of independent owner-operators on this important safety and public policy issue.

# ATTACHMENT 1



NYS Department of Transportation
TRAFFIC & SAFETY DIVISION
MOTOR CARRIER SAFETY
ASSISTANCE PROGRAM
1220 WASHINGTON AVENUE
ALBANY, NY 12232

REPORT NUMBER: 765172

DATE OF INSPECTION: 03-17-88

| NO | VIOLATION IDENTIFICATION | UNIT NO | | VIOLATIONS DISCOVERED |
|---|---|---|---|---|
| 4 | 393.48.A | 2 | X | Axle 5 L Brake Shoe upper does not move when Brake is Applyed lower shoe moves |
| 5 | 393.48.A | 2 | X | Axle 5 R lower Brake Shoe does not move when Brake is Applyed upper shoe moves |
| | | 2 | X | Axle 5 R & L Brake Linnings Rilting Bild up of Rust Between it and shoe |
| 6 | 396.3.E | 2 | X | Axle 4 Right Brake Beyound Readjustment limits |
| 7 | 393.48.A | 2 | X | Axle 4 Right Brake shoes upper and lower do not move when Brakes are Applyed |
| 8 | 172.502 | 2 | X | Placker on unit is UN1049 Should be UN1066 |
| 9 | 172.202 | 1 | | In proper shipping discription on shipping paper |
| 10 | 396.11.C3 | 1 | | No Previous Day Inspection Report |

REPAIRS MADE BY

John J. [illegible] of

ALL [illegible] EQUIP[illegible]

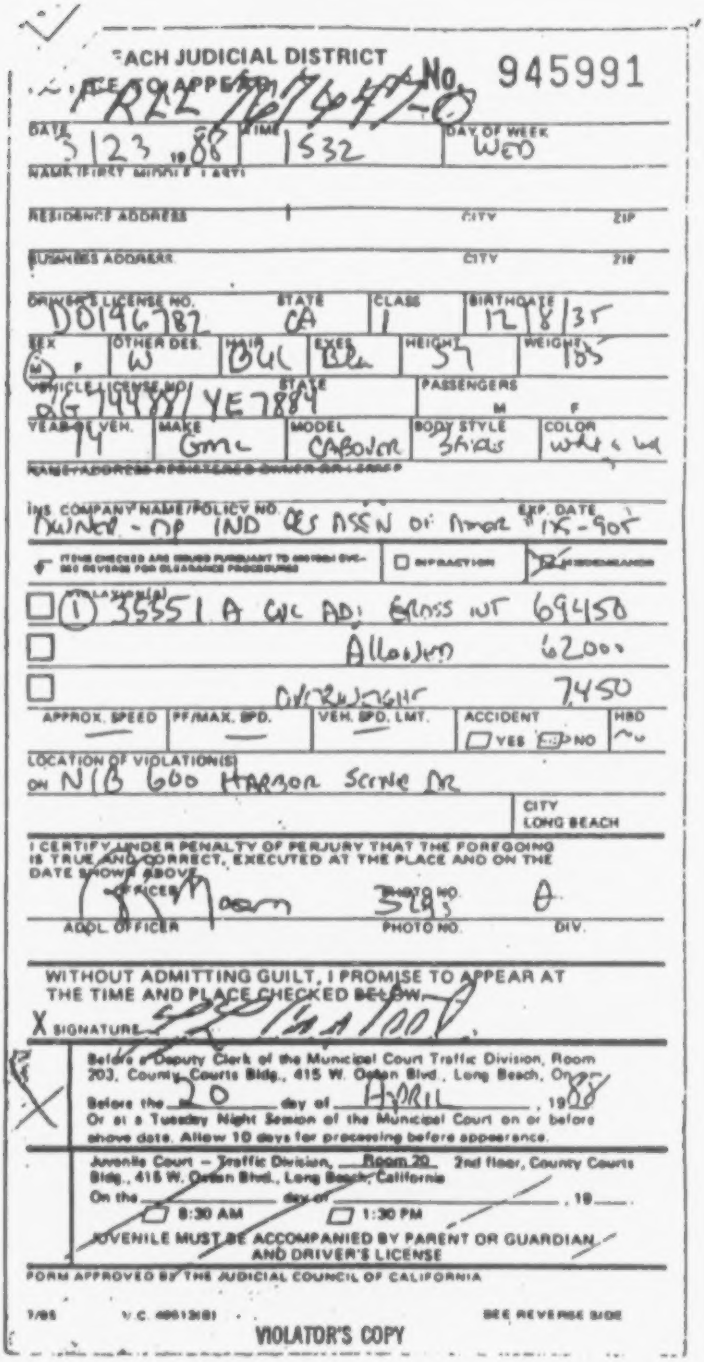
[illegible] DOi

[illegible] Data Areas

[illegible] PM

REPORT PREPARED BY

# ATTACHMENT 2



ACH JUDICIAL DISTRICT
ICE TO APPEAR **No.** 945991
REL 767447-0

| | | |
|---|---|---|
| DATE 3/23 19 88 | TIME 1532 | DAY OF WEEK WED |

NAME (FIRST MIDDLE LAST)

RESIDENCE ADDRESS CITY ZIP

BUSINESS ADDRESS CITY ZIP

| | | | | | |
|---|---|---|---|---|---|
| DRIVER'S LICENSE NO. D0196787 | STATE CA | CLASS 1 | BIRTHDATE 12/8/35 | | |
| SEX [✓ M] F | OTHER DES. W | HAIR BRL | EYES Blu | HEIGHT 57 | WEIGHT 185 |
| VEHICLE LICENSE NO. CG 74488 / YE7884 | STATE | PASSENGERS M F | | | |
| YEAR OF VEH. 74 | MAKE GMC | MODEL CABOVER | BODY STYLE 3 AXLES | COLOR white & | |

~~NAME/ADDRESS REGISTERED OWNER OR LESSEE~~

INS. COMPANY NAME/POLICY NO. OWNER - OP IND OPS ASSN OF AMER EXP. DATE #1X-905

[illegible] ☐ INFRACTION ☒ MISDEMEANOR

VIOLATION(S)
☐ ① 35551 A CVC ADJ GROSS WT 69450
☐ Allowed 62000
☐ OVERWEIGHT 7450

| APPROX. SPEED | PF/MAX. SPD. | VEH. SPD. LMT. | ACCIDENT | HBD |
|---|---|---|---|---|
| — | — | — | ☐ YES ☒ NO | no |

LOCATION OF VIOLATION(S)
ON N/B 600 HARBOR SCENIC DR
CITY LONG BEACH

I CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT, EXECUTED AT THE PLACE AND ON THE DATE SHOWN ABOVE.

OFFICER Moran PHOTO NO. 5293 B
ADDL. OFFICER PHOTO NO. DIV.

WITHOUT ADMITTING GUILT, I PROMISE TO APPEAR AT THE TIME AND PLACE CHECKED BELOW.
X SIGNATURE

X Before a Deputy Clerk of the Municipal Court Traffic Division, Room 203, County Courts Bldg., 415 W. Ocean Blvd., Long Beach, On or Before the 20 day of APRIL, 1988
Or at a Tuesday Night Session of the Municipal Court on or before above date. Allow 10 days for processing before appearance.

~~Juvenile Court – Traffic Division, Room 20 2nd floor, County Courts Bldg., 415 W. Ocean Blvd., Long Beach, California~~
~~On the ___ day of ___, 19__.~~
~~☐ 8:30 AM ☐ 1:30 PM~~
~~JUVENILE MUST BE ACCOMPANIED BY PARENT OR GUARDIAN AND DRIVER'S LICENSE~~

FORM APPROVED BY THE JUDICIAL COUNCIL OF CALIFORNIA

7/85 V.C. 40513(b) SEE REVERSE SIDE

VIOLATOR'S COPY

## ATTACHMENT 3

### OWNER/OPERATOR SETTLEMENT SHEET

Week 40

NAME: ______ ______ TRUCK# ______ DATE: 10/02/87

| INVOICE# | OW/OP | LOADED MILES | EMPTY MILES |
|---|---|---|---|
| 25-103788 | 280.50<br>40.00 ← | 330 | 0 |
| 25-104323 | 350.25 | 345 | 95 (scales) |
| 25-104422 | 229.30 | 250 | 28 |
| 25-105114 | 285.95 | 287 | 70 $110.00 detention not paid |
| TOTAL: | 1186.00 | 1212 | 193 |

LESS:

WORKMANS COMP. INS. 11.86

COLLISION BOBTAIL INS: /

FUEL: /

ADVANCES: /

COMCHECK CHGS: /

SHIPPERS ADV: /

TRACTOR/TRAILER REPAIR /

OTHER: Accident Deductible 50.00

TRAILER INS. 10.00

TOTAL DEDUCTION: 71.86

RESERVE DEDUCTION /

PREPARED BY: ______

PLUS:

PERMITS: ______

TRACTOR/TRAILER REPAIR: ______

OTHER: Tolls 7.50

TOTAL ADDITIONS: 7.50

RESERVE BALANCE 500.00

AMOUNT: 1121.64

**NOTE: DEADHEAD MILES FROM LAST LOAD ON PREVIOUS SETTLEMENT INCLUDED ON FIRST LOAD OF THIS SETTLEMENT.

OWNER/OPERATOR SETTLEMENT SHEET Week 44

NAME: ______ TRUCK# ______ DATE: 10/30/87

| INVOICE# | OW/OP | LOADED MILES | EMPTY MILES |
|---|---|---|---|
| N/A | 100.80 | 0 | 168 (INA4 293296) |
| N/A | 50.00 | Trailer Shuttle (1042259905) | |
| 25-114199 | 150.45 | 177 | 0 |
| 25-114843 | 20.00<br>71.40 | 84 | 0 ((1 scale)) |
| 25-112367 | 603.85 | 565 | 206 |
| 25-111856 | 187.55 | 215 | 8 |
| 25-111666 | 60.00<br>456.65 | 497 | 57 (unload) |
| 25-110759 | 240.15 | 243 | 56 |
| 25-110543 | 10.00<br>228.10 | 386 | 0 (1 stop) |
| 25-110114 | 223.25 | 185 | 110 |
| TOTAL: | 2502.20 | 2353 | 605 |

LESS:

| | |
|---|---|
| WORKMANS COMP. INS. | 25.02 |
| COLLISION BOBTAIL INS: | / |
| | / |
| FUEL: | 432.45 |
| ADVANCES: | 0 |
| COMCHECK CHGS: | 12.00 |
| SHIPPERS ADV: | |
| TRACTOR/TRAILER REPAIR | |
| OTHER: Accident Deductible | 50.00 |
| TRAILER INS. | 10.00 |
| TOTAL DEDUCTION: | 539.47 |
| RESERVE DEDUCTION | / |
| PREPARED BY: | |

PLUS:

| | |
|---|---|
| PERMITS: | |
| | |
| | |
| | |
| | |
| TRACTOR/TRAILER REPAIR: | |
| OTHER: Scales | 8.25 |
| Tolls | 5.90 |
| | |
| TOTAL ADDITIONS: | 14.15 |
| RESERVE BALANCE | 500.00 |
| AMOUNT: | 1,986.88 |

**NOTE: DEADHEAD MILES FROM LAST LOAD ON PREVIOUS SETTLEMENT INCLUDED ON FIRST LOAD OF THIS SETTLEMENT.

TESTIMONY PRESENTED BEFORE THE

INVESTIGATIONS AND OVERSIGHT SUBCOMMITTEE

OF THE

UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

# *"ROAD DAMAGE AND SAFETY EFFECTS ASSOCIATED WITH THE MOVEMENTS OF INTERMODAL CONTAINERS BY TRUCKS IN VIOLATION OF FEDERAL/STATE WEIGHT LAWS"*

TESTIMONY PRESENTED BY

THOMAS D. WILCOX
EXECUTIVE DIRECTOR AND GENERAL COUNSEL

NATIONAL ASSOCIATION OF STEVEDORES
2011 EYE STREET, NW
SUITE 601
WASHINGTON, DC  20006

(202) 296-2810

JUNE 28, 1990

My name is Thomas D. Wilcox and I am the Executive Director and General Counsel of the National Association of Stevedores (NAS).

The forty-four (44) NAS member companies and their subsidiary or related companies are privately owned marine terminal operator/stevedore companies conducting business on all four of the nation's seacoasts, Alaska, Hawaii and the Commonwealth of Puerto Rico.

Stevedoring companies are responsible for the safe and efficient loading of export cargo into vessels and unloading of import cargo from vessels. Marine terminal operators provide services necessary to transfer ocean-borne cargo, imports and exports, between the land transportation system and the maritime system. At many ports and terminals the stevedore and marine terminal operator are the same, or corporately related, entity. In some ports, the stevedore and marine terminal operator are separate and distinct from each other.

The NAS appreciates the opportunity to present its views to the Subcommittee on the subject of the movement of intermodal containers by trucks on the nation's highways and the question of violation of federal/state highway laws. Although the marine terminal operator is not a party to the transportation contract between the ocean carrier and shipper, as a contractor to the ocean carrier he provides the land and expertise to enable the interchange of intermodal shipping containers between the vessel and the motor carrier selected by the shipper/consignee or ocean carrier. It is that function of the marine terminal operator which is the basis for NAS interest in these hearings.

First, let me respond to the four questions set forth in your letter of May 22, 1990.

(1) The NAS was aware of the two petitions (P3-89 and P4-89) filed with the FMC. However, the NAS neither submitted comments on the petitions nor read any of the 65 comments filed by other parties. The NAS believes the FMC correctly did not act upon those petitions because neither offered a workable solution to the alleged problem. While the FMC may have had jurisdiction over the subject matter, the NAS believes that a workable solution is beyond the FMC's power to enforce.

(2) The Federal Highway Administration's (FHWA) report of March 9, 1989, "Analysis of Port Import/Export Reporting Service (PIERS) Data to Reveal Potentially Overweight Container Movements on America's Highways" is most interesting and refutes the incorrect notion that imported containers are more likely to be overweight than are exported containers. That aspect alone indicates that any workable solution cannot be limited to ports, terminals, or ocean carriers.

The FHWA accurately pointed out the shortcomings of its report in the Summary and Conclusions beginning on Page 15. All that the study shows is that there are containers, both import and export, which, when combined with some over-the-road equipment, potentially - emphasize potentially - could in combination violate the federal highway axle and weight limitations, the so-called bridge formula.

FHWA correctly points out that the scope of the actual problem cannot be estimated until there is data about how those "potentially" problem containers move over the land either by road or rail.

One can't deny the existence of a problem, but no one has any idea of its size and scope. There is a lot of anecdotal evidence, but there is to date no reliable data.

(3) What current or evolving transportation/economic factors have contributed to the overweight container problem is anyone's guess. Most likely, the same factors which contribute to or cause the problem of overweight vehicles generally. Some will say it began with the deregulation of the motor carrier industry. Some will say that the Shipping Act of 1984 is the cause, because of the shippers' leverage over the ocean carrier. Some will blame it on increased competition. It appears that the real cause, however fashioned or dressed up, is cost. One sees it in every segment of transportation. How do we move more product at less cost? We build larger ships, larger trucks, use double stack rail cars or tandem trailers, automated marine terminals, for example.

Transportation rates are depressed, especially in the maritime sector. Transportation costs continue to rise. Solvency depends upon unit costs being less than unit revenue. Frankly, that means you have to move more goods at the lowest possible cost, and that means you have to increase the size and weight of the individual load, be it truck, rail car, container, trailer, or vessel.

(4) The solution? The most obvious one is to build stronger

highways and let the transportation system and all participants realize their fullest productivity and economies. The problem with that, unfortunately, is the federal deficit - or still another cost/price squeeze. As a result, transportation industry productivity will be held down because government -- state and federal -- cannot afford to keep up with private sector innovations required to remain competitive and productive.

The problem then becomes one of law enforcement - by whom, against whom, and how? The prevailing practice is for state legislatures to set and enforce highway weight limits in compliance with federal limits (23 U.S.C. sec. 127); and for the state police to stop and weigh motor vehicle rigs (tractor and trailer or flatbed or tractor, chassis, and container), and fine the driver of the overweight rig. If a state does not do so, it will lose its share of federal highway funds. Quite naturally the motor carrier is upset about this, especially when the amount of the fine can exceed the pay for the haul.

Intermodal ocean containers are but a small, and as yet not quantified, subset of the much larger problem of overweight vehicles of all kinds and purposes. That raises the question of why motor carrier rigs which include ocean cargo containers should be treated differently from any other type of motor carrier rig? Any overweight motor carrier rig has the potential to damage the nation's highways and bridges. It is the weight that matters, not the contents of the load nor its origin or destination.

The fact remains, moreover, that no one knows what percentage of total interstate motor carrier traffic is ocean cargo container traffic. The FHWA points out that it doesn't know, and the so-called PIERS study in March 1989 doesn't answer the question. It may very well be that the actual percentage is less than that attributed to refuse trucks by this Committee in 1982 (H. Rept. 97-555 at pages 24-25) in its report on the Surface Transportation Assistance Act of 1982 (PL 97-424). Some may feel uneasy with equating ocean containers to refuse trucks, but there are similarities with respect to the Committee's analysis of the refuse truck situation. Certainly, there has to be more data and study about ocean carrier over-the-road traffic just as the Committee stated with respect to refuse trucks in 1982.

As to U.S. exports, a motor carrier rig with an ocean container moving from Chicago to New York for loading on a ship is no different from the highway's point of view than a tractor trailer moving from Chicago to New York in domestic commerce, except that one rig has three pieces - tractor, chassis, container - and one has two pieces - tractor and trailer. In both cases, the highway weight limitations cannot be violated until the tractor (which has its own weight considerations)is combined with the cargo carrying equipment. It is the combination that could produce the harm. To solve the highway weight problem then, every domestic loading dock or terminal in the country would have to have appropriate axle weight scales and a certified weigh-master before the motor carrier could be sure that upon entry to the highway he would not violate the axle/weight or bridge formula. That is not only unrealistic, but extremely costly.

With respect to imported containers, the enforcement and transportation problems are more acute and complicated. However, some have suggested that all imported containers be weighed on the marine terminal before being allowed to enter the highways.

Weighing the containers alone will not satisfy the axle-bridge formula. The complete rig - tractor, chassis and container - would have to be weighed. At present, no U.S. marine terminal is equipped with either the appropriate scale or the proper personnel to perform the weighing, and none is designed to perform axle-bridge formula type weighing and documentation, neither of which has any relationship to the purpose and function of a marine terminal.

Furthermore, it is our understanding that there are no so-called "weigh-in-motion" scales of sufficient accuracy or reliability to weigh the rig and make the axle-weight-bridge calculations necessary to satisfy the complex federal formula. Existing scales require the rig to be stopped - weighed - and the spacing of axles measured before the necessary calculation can be made. Assuming the presence of trained personnel and a through-put of 1,000 gate moves per day at a large marine terminal, it would take 33 extra hours per day if it took only 2 minutes to weigh and calculate each gate move. That would require the terminal operator to acquire, at a minimum, 5 weigh scales and employ 5 extra groups of workers to move the 1,000 units off the terminal each day. The added expense would be enormous and would have to be passed on either to the trucking company or the consignee of the cargoes.

The next set of problems is what to do with a rig that violates the formula, and who will be responsible for doing it. Do you send the driver away to get another tractor? Do you get another chassis? Do you unload the container, and if so, where? Most marine container terminals no longer have a facility to strip containers anymore for several reasons, not the least of which is the reduced presence of Customs Inspectors on marine terminals.

Unlike export containers, all imported containers are sealed pursuant to U.S. Customs Service regulations, and the seal may not be removed by anyone unless under the supervision of the Customs Service [19 C.F.R. Part 18. 4 (i)]. In most ports the Customs Central Examination Station is not on the marine terminal and it often requires over-the-road travel to get to one.

While all of this is going on, delivery of the cargo is being delayed, and the law abiding motor carrier is unpaid for its efforts.

Imports are subject to a variety of federal regulations and inspections including the payment of Customs duties. Therefore, the consignee or its representative would have to be contacted for instructions for dealing with the contents of the container if the ocean carrier's responsibility under the bill of lading ended with making the cargo available for delivery as under a port-to-port, or point-to-port bill of lading.

If the container is subject to an intermodal or through bill of lading and is under Customs seal for Customs entry at another port or an inland location, the carrier will have to be notified. If the container has to be stripped and part of its contents placed in another container, two new Customs seals and new bills of lading will have to be put into place. And still, the law abiding motor carrier has not completed his delivery. The cost to the consignee or shipper for all the extra handling probably is greater than the full ocean freight.

As an aside, there have been occasions when a full Customs examination has been more expensive than the value of the cargo, and the consignee has simply left the cargo at the terminal rather than pay the extra expense.

Having said all of that, if import cargoes, containers or otherwise, and the overland rig have to be weighed shoreside in order to protect the nation's highways, they must not be weighed on the marine terminal. The cost would be prohibitive not only in money but in time due to the inevitable marine terminal congestion. Terminal entry gates and the road system leading to the terminal would become unmanageable and extraordinarily congested, as would the marine terminal itself. The congestion caused by import containers would directly affect the terminal's ability to receive and load export cargoes. In addition, it would force the marine terminal operator into the law enforcement business, where it does not belong, and burden it with potential liabilities it is unable to meet.

A requirement that all imported container-carrying rigs be weighed at a central location away from the marine terminal would eliminate the problem of marine terminal congestion and attendant costs. It would not assure prompt payment to the rig operator, nor would it reduce the delay in the over-the-road delivery process. It would, however, place law enforcement where it belongs - in the hands of law enforcement agencies, and it would alert shippers to the consequences of overloading shipping containers within the context of domestic U.S. highway laws. It would not resolve the differences between the international maritime weight regime or overseas highways laws with U.S. highway law.

With respect to U.S. domestic highway law, we are told that for competitive reasons, some states enforce it more vigorously than others. We are told, too, that some states are more liberal in granting weight limit exemptions than others. In my opinion, all of this reinforces the thought that the overweight motor vehicle problem is primarily a problem of law enforcement, and the obstacles to law enforcement are competition, cost, and productivity.

Vigorous enforcement of U.S. highway limits which are not compatible with international standards will have at least three sure results:

1. An increased usage of railroads
2. Increased costs for motor vehicle transportation
3. Reduction in transportation productivity

It might protect the nation's highways and bridges, but the extent of that protection is pure speculation at this point.

Thus, the appropriate action to be taken must be federal and should be a balanced response after weighing the potential damage to the international maritime transportation system and the potential protection to the highway/bridge infrastructure. In our view, that balanced response is now beyond the competence of any state or federal agency, and cannot be formulated without more hard information.

Thank you very much.

# TESTIMONY OF STEPHEN J. WYMAN
ON BEHALF OF
# AGRICULTURE OCEAN TRANSPORTATION COALITION
Before the Committee on Public Works, House of Representatives
June 26, 1990

My name is Stephen J. Wyman, of Allenberg Cotton Company. I represent the American Cotton Shippers Association as a member of the Board of Directors of the Agriculture Ocean Transportation Coalition, a coalition of the U.S. agriculture industry concerned about ocean transportation issues.

Originally scheduled to testify on behalf of the Agriculture Ocean Transportation Coalition was Patrick Hanneman, a Vice President of Dole Citrus, which I know is a major constituent of yours, Mr. Chairman, in Southern California. He is out of the country, and I was asked to testify in his place.

Included in the coalition, on behalf of whom I am speaking, is the citrus industry, the cotton industry, the fruit and vegetable industries, beef, pork, forest products, hay, and many, many other agricultural commodities. We also include the suppliers to the agricultural industry, including manufacturers of agricultural fertilizers, for example. The cotton industry alone generates exports approaching the equivalent of 100,000 forty foot containers valued between 2.5 and 3 billion dollars per year. Members of AgOTC and ACSA are involved in the marketing and sale in excess of 90 per cent of these exports.

The Agriculture Ocean Transportation Coalition has actively opposed the apparently simplistic proposals by the ocean and truck carriers as presented to the Federal Maritime Commission. We believe that these proposals to either ban per container rates, or to oppose new and very low national weight limits, are designed primarily to reduce competition or increase the number of containers, and thus increase the revenues of the carriers who made the proposals. We believe that the safety issue is being used to camouflage this underlying objective.

The AgOTC membership is extremely concerned about safety. We do not load containers above safe levels. We attempt to work with carriers for whom safety is an important component of the transportation business and to shy away from those carriers for whom safety is not important.

With this in mind, the AgOTC has concluded that it is possible to conform with highway weight limits currently imposed by states as well as the federal government and to operate safely, without resorting to limitations on the efficiency of the developing container technology.

We believe that the term "overweight container" is, in itself, misleading. Our members do load containers, in excess of the limits which the carriers have proposed that the FMC impose nationally. But we do so in a manner which conforms with national, state, and local laws and safety standards.

Container technology has enhanced international ocean commerce. It has benefitted, among other ports, the ports of Los Angeles and Long Beach in particular. We believe that these ports and the U.S. international trade posture is benefitted by maximizing efficiency in ocean transportation. The proposals of the carriers are, simply stated, designed to limit efficiency, to increase carrier revenues, to increase the costs to U.S. exporters. Such restrictions will increase the number of containers moving in already congested port areas such as Los Angeles and Long Beach.

U.S. agricultural exports, whether produced in Southern California or elsewhere in the country, always compete with similar products produced elsewhere in the world. Our ability to market our products in foreign countries is tremendously cost sensitive. Reducing efficiency in container transportation increases our costs, with the immediate result being reduced export opportunities. Some commodities, such as cotton, are covered by the marketing programs contained in the current and proposed farm legislation. Such increases will not only make these programs less effective, but also more costly to the taxpayer.

AgOTC members have found many ways to maximize container transportation. Some of our members truck their products to port warehouses, where the container is stuffed. In other cases AgOTC warehouses, where the container is stuffed. In other cases AgOTC members' plants are located immediately adjacent to marine terminals. Other AgOTC members load containers on railroads which have spurs leading directly into our facilities, and then transport the containers exclusively by rail directly onto the marine terminal. Other AgOTC members load containers on trucks utilizing special axle technology in order to distribute the load safely and legally. In all these situations, AgOTC members' shipments do not travel on highways utilizing standard truck chassis. **While the containers may be heavy, they are not overweight, they are not unsafe, and they are not illegal.**

The question of how to maximize container technology efficiency in a safe manner is one which the private sector can resolve among themselves. There is already a Task Force in place which represents all the various carriers, shippers, marine terminal operators, and port authorities who are participating in the hearing. Let this Task Force work out this problem.

There is no need for legislation, or for additional Federal intervention into an area where state governments already have jurisdiction. A simplistic "solution" as requested by the carriers, will have extremely detrimental impacts on many other industries, including the companies that the AgOTC represents.

BEFORE THE

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

U.S. HOUSE OF REPRESENTATIVES

INVESTIGATIONS AND OVERSIGHT SUB-COMMITTEE

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## OVERSIGHT HEARINGS
## MOVEMENTS OF INTERMODAL CONTAINERS BY TRUCKS

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TESTIMONY OF

**FRED M. ZITTO**

Submitted in behalf of

AMERICAN PAPER INSTITUTE, INC.
NATIONAL FOREST PRODUCTS ASSOCIATION
NATIONAL PARTICLEBOARD ASSOCIATION

AMERICAN PAPER INSTITUTE, INC.
1250 Connecticut Avenue, N.W.
Washington, DC 20036

June 27, 1990

Before the
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
U.S. HOUSE OF REPRESENTATIVES
INVESTIGATIONS AND OVERSIGHT SUB-COMMITTEE

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My name is Fred M. Zitto. I am Manager, U.S. Distribution Operations of International Paper Company. My business address is 6400 Poplar Avenue, Memphis, TN 38197. I appear for the American Paper Institute, Inc., to whom I shall sometime refer to as API. To conserve the time of this Committee, I have also been authorized to speak for the National Forest Products Association and the National Particleboard Association.

I have been actively engaged in the field of transportation and distribution for over 30 years. My present duties with International Paper include the responsibility for managing of all transportation for my Company within the United States.

API is the national trade association of the pulp, paper and paperboard industry and consists of approximately 175 manufacturers which produce 90% of the nation's output of these products. The National Particleboard Association is the national trade association representing producers and distributors of mat-formed particleboard and medium density fibreboard (MDF) which are used primarily as a base component for furniture and cabinets. The Association's eighteen member companies produce over 80% of the U.S. output of particleboard and MDF. The Forest Products Association is the national trade association representing the interests and views of owners and managers of forest lands, manufacturers of forest products and affiliated regional and product associations in virtually every state. The forest products industry, which these associations represent, is one of the nation's largest exporters. In 1989 exports of 18.6 million tons of pulp, paper and waste paper provided a favorable contribution of $8.7 billion to the country's balance of payments. Additionally, exports of solid wood products contributed in excess $6 billion.

## THE FOREST PRODUCTS INDUSTRY POSITION

First of all, the forest products industry is greatly appreciative of the opportunity to assist this Committee in evaluating the effects of transporting intermodal containers by truck and developing recommendations, where appropriate, for improving the safe, legal and efficient handling of containers. Compliance with safety and legal requirements in loading intermodal containers is a complex procedure requiring consideration of road weight limits, axle weight limits, bridge weight formulae and the limitations of the container, the ship, the truck and/or the rail car. Nevertheless, it has been the experience of our members that shippers and carriers who are committed to safety and compliance with the law can manage this problem and manage it well.

There is always a need and, in our opinion, a responsibility to review and improve safety measures and strengthen compliance with the law. Our members are dedicated to safety and anxious to provide any information and assistance that may be helpful in improving safety and compliance with the law. Our concern is that any action that is taken be based on full, factual and specific data so that the action can be effective and commensurate with the magnitude of the problem. Any action that is based on inadequate, incomplete or erroneous information can adversely affect the efficient utilization of containers and result in significant and unnecessary increases in the costs to United States exporters. The forest products industry is heavily involved in global markets and head to head competition with producers in other countries. Any unnecessary increases in costs or unduly restrictive regulations that handicap U.S. producers in competing in world markets certainly are not in the interests of U.S. producers, carriers or the general public. There is also a need, in our opinion, to sort out from the voluminous statements, opinions and positions taken by various parties the actual or perceived problems involving safety, compliance with the law and damage to the highways from efforts to shift the blame and penalties for violation between the parties, and to exploit safety in order to blunt competition and commercial relationships between the various parties. The objective should be to improve safety and compliance with the law, not to assign blame, shift responsibility or blunt competition.

## REACTION TO OVERWEIGHT CONTAINER PETITIONS

## P3-89 and P4-89

The Forest Products Industry viewed Petitions P3-89 and P4-89 as attempts to exploit an inadequately documented and poorly defined "safety" issue to eliminate competition and consolidate the economic control of rate making by the TWRA and SEUSA shipping conferences. The petitions depended heavily on the Federal Highway

Administration's PIERS data that never purported to be any more than a statistical derivation of potential overweight containers. If approved, the petitions would have banned or severely limited the assessment of per container rates on thousands of safely and legally loaded containers, many of which moved by rail, traveled over private roads, were stuffed at the ports and never traveled over the interstate highways; or were shipped in specialized equipment or under special permits that provided for the safe and legal shipment over the public highways. The resulting reduction in the efficient loading of containers and the dampening effect on competition would have exacerbated recurring shortages of containers and significantly increased shipping costs at the expense of the competitive position of U.S. producers in world markets.

The Department of Transportation, through the Federal Highway Administration and the various state and local authorities, has the necessary statutory authority to address issues of highway safety. The subject is adequately covered by federal and state laws. If there is a problem, and provided the problem is well defined, it should be addressed head on under the statutory authority and agencies charged with highway safety.

We agree fully with the Federal Maritime Commission's finding that it would be inappropriate for the F.M.C. to exercise jurisdiction in this area and that the Federal Highway Administration study upon which the petitioners rely does not provide a sound basis for Commission action.

## FEDERAL HIGHWAY ADMINISTRATION ANALYSIS OF JOURNAL OF COMMERCE PIERS DATA

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The Federal Highway Administration's analysis of overweight containers is based on a sampling of the Journal of Commerce master file of data (PIERS) recorded from import manifests and export bills of lading for containerized freight moving through U.S. ports. The sampling techniques may be statistically sound and the summary of loadings by container size professionally performed, however, the study is fatally flawed by the lack of data required to determine the following factors:

- the extent of the movement over the public highways
- whether the containers moved by rail
- whether the containers were stuffed at the port
- the number of containers that moved on special state permits or in areas exempt from the 80,000 pound highway limit
- the number of containers that moved on specialized trucking equipment permitting loads in excess of 80,000 pounds

There was no matching of actual containers to particular trucking equipment, no check of the distribution of weight over the axles and not one shipment was actually weighed.

The study findings are limited to statistically developed "potentially" overweight containers. Based on this lack of real world data, there is no way to prove or disprove the number of containers operated in violation of the law or that were unsafe. We agree fully with the Federal Maritime Commission's finding that this study does not provide a sound basis for Commission action, or in our opinion, any action.

The forest products industry fully endorses the National Industrial Transportation League's recommendation that an appropriate authority, such as the Transportation Research Board, General Accounting Office, or some other recognized, independent body be authorized to conduct a comprehensive and definitive study. Effective and responsible action in the highly important area depends on an adequate and detailed information base.

## RECOMMENDED SOLUTIONS TO THE OVERWEIGHT CONTAINER ISSUE

A comprehensive and definitive study of container loading would appear to be an essential starting point for developing solutions. Any meaningful assessment of the magnitude and causes of the overloaded container problem requires an adequate data base that does not currently exist. Again, we recommend that such a study be authorized.

In the meantime, there is no reason that some initiatives addressing the issue cannot proceed and that some generally accepted programs for improving safety performance should not be accelerated. For example, at the initiative of the National Industrial Transportation League, an International Container Loading Task Force consisting of shippers, motor carriers, ports and ocean carriers was formed in January with the objective of developing comprehensive private sector solutions to the problem. I am privileged to be the forest products industry representative on the Task Force. We have met twice and are scheduled to meet again in late July. I have been pleasantly surprised by the constructive and cooperative attitude that has developed and the growing consensus on approaches to solving the problem. The major recommendations of the group fell into the following categories:

1) support of a more definitive study of the problem
2) develop a shipper/carrier educational program on equipment and weights
3) increased penalties for repetitive overloading
4) increased police enforcement through random testing
5) tolerances for highway weight limits
6) weighing import/export containers at the ports

As these suggested actions are developed, fleshed out and refined, the individual members of the Task Force will report back to their constituencies in an effort to build a broad consensus for cooperative action. The development of a shipper/carrier educational program on equipment and weights can be progressed and accelerated by the group on its own initiative. Some of the other proposals may require regulatory or legislative action. The deliberations of the group have not progressed to the point that this determination can be made.

On behalf of the forest products industry, I would like to express our appreciation for the opportunity to participate in this proceeding. The forest products industry stands ready to provide any assistance they can to your efforts to improve the safe handling of intermodal containers. I shall try to answer any questions you may have.

## SUBMISSION FOR THE RECORD

STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY
GEORGE DEUKMEJIAN, Governor

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Members, California Legislature
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Sacramento, CA 95814

Dear Members:

In accordance with Section 35580 of the California Vehicle Code (Chapter 865, Statutes of 1988 - AB 4672, Katz), enclosed is the report Overweight Intermodal Containers and Piggyback Trailers. The Department requests direction from the Legislature on the issues identified below. The Departmental Transportation Advisory Committee reviewed the report at its November 17, 1989, meeting and also requested that these issues be brought to the Legislature's attention.

As background information, an intermodal container or piggyback trailer may meet the weight limitations for a ship, rail car, or crane, but an overweight problem arises when it is placed on a truck and required to meet lighter truck axle load limitations. Exports, rather than imports, are the larger part of the overweight container issue. Due to the high volume of intermodal shipments at the major California ports, law enforcement actions should initially concentrate on the port areas. Exports are weighed for gross vehicle weight at marine terminal gates whereas imports are not usually weighed. Exports are coming from diverse points to a central location, whereas imports are leaving a central location for diverse points. These operational characteristics point to possible different law enforcement approaches for exports as opposed to imports.

The AB 4672 Task Force evaluated in detail three alternatives for weight enforcement:

1. Increased California Highway Patrol (CHP) mobile road enforcement for export and import containers;

2. CHP access to private weight records generated at marine terminals for export containers; and

3. Selective weighing, under the direction of the CHP, of import containers based on information contained in a ship's manifest or bills of lading.

Alternatives 2 and 3 require new legislation authorizing the access by the CHP to private export weight records and private import documents. The law enforcement measures to be implemented must be fashioned within the context of federal government efforts in order to maintain a balance with other states with respect to the possible diversion of trade due to law enforcement actions.

Though there was general agreement by the Task Force on the concept of the utilization of intermodal industry private weight records, two enforcement options emerged for export containers. The issue for exports is what legal authority is to be utilized to obtain access to private weight records. One option would provide the CHP direct access to the export records under new legislative authority. The second option would use reasonable cause as the legal authority as established through an analysis of the PIERS (Port Import/Export Reporting Service by the Journal of Commerce) data base.

The Department requests direction on:

1. Whether or not the Legislature concurs with the concept of access to private weight records.
2. Whether or not the decisions and details implementing the selected alternatives should be worked out through the legislative process or through further efforts of the Task Force in conjunction with the Department.

Sincerely,

Robert K Best

ROBERT K. BEST
Director

Enclosure

# OVERWEIGHT INTERMODAL
# CONTAINERS AND
# PIGGYBACK TRAILERS

REPORT TO THE LEGISLATURE
As Required by Section 35580 of the
California Vehicle Code
Chapter 865, Statutes of 1988 (AB4672-Katz)

December 1989

California Department of Transportation

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## EXECUTIVE SUMMARY

### Introduction

Section 35580 of the California Vehicle Code (Chapter 865, Statutes of 1988-AB 4672, Katz) requires the California Department of Transportation (Caltrans), in cooperation with the California Highway Patrol (CHP), to develop a plan for implementing or identifying new or existing scale facilities at major intermodal terminals to enforce road weight limits on intermodal containers and piggyback trailers. The plan shall be developed in cooperation with a task force consisting of representatives of ports, local government, shippers, labor organizations, and the trucking, steamship, and railroad industries. The plan was originally to be submitted to the Legislature by August 1, 1989, but that date was extended to January 1, 1990. Caltrans shall thereafter submit annual reports describing its progress in developing the intermodal weight determination program, and its recommendations for the future of the program. The task force strongly recommended that potential solutions in addition to truck scale facilities should be identified and evaluated.

### The Intermodal Industry

The intermodal industry transports freight in containers and piggyback trailers by ship, rail, and truck. Loading cranes and other specialized equipment have been developed to transfer the containers and piggyback trailers between the various transportation modes. Trucks are needed to transport the containers and piggyback trailers:

- between the point where the container or trailer is loaded with cargo to a marine or rail terminal;
- between a marine and rail terminal; and/or
- between a marine or rail terminal and the point where the container or trailer is unloaded.

The intermodal industry is international in scope. In the United States, the use of railroads to transport containers across the United States, referred to as land bridge, presents an option to using the Panama Canal. Thus, a container may travel thousands of miles, but a very small portion of the trip is by truck.

As a general statement on the issue of overweight intermodal shipments, the task force reached the following conclusions. An intermodal container or piggyback trailer may meet the weight limitations for a ship, rail car, or crane, but an overweight problem arises when it is placed on a truck and required to meet lighter truck axle load limitations. The intermodal transportation chain is international in scope and involves many parties, and this makes it difficult to assign the responsibility for an overweight intermodal shipment to the party primarily responsible. Without a consistently applied nationwide enforcement program, truck operators and ocean carriers must either transport what is tendered by the shippers or accept the loss of business under very competitive market conditions. Truck operators are the parties being cited for overweights, but they are not responsible for the loading of intermodal shipments. But when truck operators have knowledge of the shipment being overweight, they must accept some of the responsibility for transporting overweights on a public highway. Reloading an overweight shipment to reduce its weight may cost more than the carrier earns in transporting it. Decisions on overweights are being made throughout the intermodal transportation chain on the basis of economics.

## Public Road Weight Limits

In 1982, Congress established new federal mandatory weight limits. They are mandatory in the sense that if a state doesn't comply, the state will not receive any federal-aid Interstate construction funds. For the Interstate System, states are required to allow trucks to carry 20,000 pounds on a single axle, 34,000 pounds on tandem axles, and 80,000 pounds gross vehicle weight, subject to the federal bridge formula. Weight limitations on non-Interstate roads are controlled by the states.

The California vehicle weight limits are defined in the California Vehicle Code, beginning with Section 35550, as follows:

- Bridge formula limits are defined as set out in the table contained in Section 35551;
- Front steering axle limit of 12,500 pounds;
- Single axle limit of 20,000 pounds;
- Tandem axle limit of 34,000 pounds with the distance between the axles equal to or less than 8 feet;
- Gross weight limit of 80,000 pounds; and
- The load on one wheel or wheels supporting one end of an axle is limited to 10,500 pounds.

The bridge formula limits control the axle loads in combination with the distance between the axles. This spreads out the load when a vehicle crosses a bridge and maintains the stress in the bridge within design limits. The bridge formula weight limits are usually the first limits reached as the vehicle weight increases.

## The Amount of Overweight Intermodal Freight

Intermodal transportation is a growing, significant contributor to the movement of international goods in the United States and in California. The Ports of Long Beach, Los Angeles, and Oakland rank in the top 20 world ports for container traffic. In 1988, the Ports of Long Beach, Los Angeles, and Oakland handled 1.9 million loaded containers. Of these containers, 46 percent were in export trade and 54 percent were in import trade. From 1978 to 1988, intermodal railroad loadings in the United States increased from 3.2 million to 5.7 million trailers and containers. About 60 percent of the intermodal railroad loadings in 1988 were trailer on flat car (TOFC). With the introduction of doublestack container trains in the 1980's, container on flat car (COFC) loadings showed substantial growth.

For the United States trucking industry in general, it has been estimated that 10% to 20% of all trucks over 10,000 pounds are operating overweight. Based on weigh-in-motion data on state highways, it is estimated the trucking industry in California operates overweight about 20% of the time. It is estimated that the Ports of Long Beach and Los Angeles are responsible for roughly 7 percent of the truck traffic in the Los Angeles region.

In March 1989, the Federal Highway Administration (FHWA) released the results of its analysis of the Journal of Commerce Port Import/Export Reporting Service (PIERS) master file consisting of data recorded from import manifests and export bills of lading for containerized freight moving through United States ports. A sampling of the data was compared against the average maximum cargo loads to maintain compliance with the federal bridge formula. The containers exceeding the average maximum cargo loads were deemed "potentially overweight containers" since no actual weighings were performed. For all containers moving through United States ports from October 1987 through September 1988, the FHWA analysis estimated that the potential overweight violation rate was 39% for exports and 26% for imports.

Most commentators on the intermodal industry agree that the containerization of export and import trade will continue to grow. In addition, the containerization of the domestic transportation market is receiving increasing attention with the doublestack train cited as a means of making inroads into the domestic market. To the extent that containers make any advances in the domestic market, there will also exist the potential for additional violations of the highway weight limits, especially in light of the larger containers being purchased to serve the domestic market. These domestic container shipments will also increase container traffic at rail terminals located at non-port sites. The increasing use of load center ports, larger container ships, and doublestack trains will continue to concentrate intermodal shipments at large intermodal exchange points in the transportation chain. For weigh limit enforcement efforts, this points to concentrating enforcement strategies and resources at these key exchange points.

## Law Enforcement

Public road weight limit enforcement programs and activities are performed by state or local governmental agencies. Per authority contained in the Surface Transportation Assistance Act of 1978, the Federal Highway Administration (FHWA) requires each state to develop a plan for the maintenance of an effective enforcement process. For the purpose of employee safety, the Occupational Safety and Health Administration (OSHA) has issued marine terminal regulations concerning the availability and posting of information on container weights.

The enforcement of public road weight limits is performed in the port areas by Mobile Road Enforcement Units of the California Highway Patrol (CHP) and officers of local police departments. In the immediate vicinity of the Ports of Long Beach and Los Angeles, there are 9 public and 24 private certified scales. For the Port of Oakland, there are 9 public and 10 private certified scales. If an officer has reason to believe that a truck is overweight, the officer has the authority to direct the truck to the nearest scale within 5 miles. The resources devoted to weight enforcement are very limited in view of the large volume of container traffic through California's major ports. Technological advances in weigh-in-motion (WIM) scales, automatic vehicle identification (AVI), automatic vehicle classification (AVC), and automatic equipment identification (AEI) systems are being implemented and should play a significant role in future enforcement efforts.

## Alternatives

Alternatives to reduce the amount of overweight intermodal shipments were developed from the task force meetings, various reports on the issue, and articles appearing in trade periodicals. In the process of developing the alternatives and recommendations, the study's task force pointed out that the following considerations must be taken into account:

- Any proposed solution must consider the efficient movement of cargo.

- An even playing field needs to be maintained. If one railroad, port, or marine terminal operator informs their customers that their containers will be weighed and that their loads must be legal as to highway loads, then all players must do the same.

- Any proposed solution must come to grips with the competitiveness issue with respect to other ports on the Pacific Coast. Solutions that are unique to conditions in California will not be transferrable to the rest of the United States and this has implications for the competitiveness issue. California must carefully evaluate the options to minimize any possible diversion of trade to other Pacific Coast ports.

- The issue of overweight intermodal shipments is a national problem. The findings and recommendations of this study need to be tied into similar efforts throughout the nation and at the federal level.

Due to the high volume of intermodal shipments at the major California ports, law enforcement actions should be concentrated on the port areas. Exports are weighed for gross vehicle weight at marine terminal gates whereas imports are not usually weighed. The export is weighed to properly stow it onboard a ship. Exports are coming from diverse points to a central location, whereas imports are leaving a central location for diverse points. These operational characteristics point to possible different law enforcement approaches for exports as opposed to imports.

The primary law enforcement alternatives selected for detailed evaluation were:

- increased CHP mobile road enforcement for export and import containers;

- CHP access to private weight records generated at marine terminals for export containers; and

- selective weighing, under the direction of the CHP, of import containers based on information contained in a ship's manifest or bills of lading.

Mobile road enforcement would consist of using portable weigh-in-motion (WIM) equipment as a screening device. This would increase the probability of identifying an overweight shipment without having to weigh every truck at a static scale. The WIM screening will increase the number of truck weights observed in comparison to a weighing process involving only static scales since the static weighing process requires a truck to be stopped and is considerably more time consuming. Using the portable WIM information, the indicated overweight trucks would be apprehended and directed to a public static scale. An increased computer data base of overweight citations resulting from this weighing process would be analyzed for the identification of habitual violators. In addition to criminal prosecution under the Vehicle Code, the habitual violator would be prosecuted for an unfair business practice cause of action under the Business and Professions Code.

The second alternative would allow the CHP to access private export weight records generated at marine terminals. These records typically include information on the carriers, shipper/consignee, type of commodity, container size, truck gross scale weight, tare weights for the truck tractor, chassis and container, and a calculated cargo load weight. An analysis would be performed on this information to identify overweight trucks. Legislation would be required to authorize the CHP to access the private weight records and to define a civil cause of action and civil penalty for the prosecution of overweight cases discovered by means of this export records search. Using a computer data base of these cases, the habitual violator would be prosecuted for an unfair business practice cause of action under the Business and Professions Code.

The third alternative would allow the CHP to access import documents (ship's manifest or bills of lading) to select potentially overweight trucks for weighing at a public static scale. If the weighing process reveals an overweight truck, the truck axle spacings will have to be adjusted or the cargo load lightened to bring the overweight truck into compliance with the appropriate load limits. This selective weighing process is a preventive measure, whereas the export records search occurs after the truck travels on public roads. Legislation would be required to authorize the CHP to access private import documents and to define a criminal penalty for noncompliance with the selective weighing procedures.

The Journal of Commerce PIERS master file consisting of data recorded from import manifests and export bills of lading for freight moving through U. S. ports may be used to identify potentially overweight containers when transported by a truck. The PIERS data base contains information on container weight, container size, commodity, shipper, consignee, carriers, and origin and destination. The PIERS data base could be used to focus law enforcement activities.

The exhibit on the next page is a summary of the costs of various levels of resources allocated to the law enforcement alternatives and an estimate of the effectiveness of those alternatives. The effectiveness measure is annual truck weights reviewed instead of overweight citations since no reasonable basis could be established to make an estimate of the number of citations that would be issued.

## SUMMARY OF LAW ENFORCEMENT OPTIONS

| OPTION | STAFF ASSIGNED[1] | ANNUAL OPERATING COST[2] | INITIAL CAPITAL COST | FIRST YEAR TOTAL STARTUP COST | ANNUAL TRUCK WEIGHTS REVIEWED | FIRST YEAR COST PER REVIEW |
|---|---|---|---|---|---|---|
| WIM/Static Weighing (Exports & Imports) | 6(3 Teams) | $324,000 | $225,000 | $ 549,000 | 90,000[3] | $6.1 |
| | 12(6 Teams) | $648,000 | $450,000 | $1,098,000 | 180,000[3] | $6.1 |
| | 18(9 Teams) | $972,000 | $675,000 | $1,647,000 | 270,000[3] | $6.1 |
| Private Weight Records (Exports) | 3 | $177,000 | $ 45,000 | $ 222,000 | 300,000[4] | $0.7 |
| | 6 | $354,000 | $ 90,000 | $ 444,000 | 600,000[4] | $0.7 |
| Selective Weighing (Imports) | 6(3 Teams) | $354,000 | $ 90,000 | $ 444,000 | 150,000[4] | $3.0 |
| | 12(6 Teams) | $708,000 | $180,000 | $ 888,000 | 300,000[4] | $3.0 |

---

[1] Allocated equally to (1) Ports of Oakland and San Francisco; (2) Port of Long Beach, and (3) Port of Log Angeles.

[2] Includes salaries, benefits, and vehicle maintenance. The weighing costs under the WIM/static weighing and selective weighing options are not included, and they would very according to the number of trucks selected to be weighed. The cost to weigh a truck at a public scale is $5 or the CHP could use its portable static scales.

[3] Assumed an average of 20 loaded containers per hour per WIM location. Six hours per day of weighing are assumed due to setup and takedown time of the WIM equipment and lane closures.

[4] Based on an adjusted State of Minnesota rate.

## Recommendations

The overall strategy in developing recommendations utilizes actions to remove economic incentives to transport overweight shipments and actions to establish economic disincentives of sufficient magnitude that are focused on the parties responsible for creating overweight shipments. The recommendations reflect current or proposed actions undertaken by the intermodal industry. A second set of recommendations is presented for law enforcement actions.

- **Intermodal industry actions**

Intermodal industry actions include educational, regulatory, and facility improvement activities. These activities should be supported and governmental regulatory agencies encouraged to implement appropriate changes.

These activities include educating all intermodal parties on public road weight limits and how the number of overweights may be reduced through the use of appropriate chassis equipment. A comprehensive educational and outreach effort could be coordinated through various intermodal industry associations and governmental agencies.

As petitioned by the Transpacific Westbound Rate Agreement (association of ten ocean carriers in US/Asian trade), American Trucking Associations (ATA), ATA's Intermodal Council, and the South Europe/U.S.A. Freight Conference (association of 15 ocean carriers in US/European trade), the Federal Maritime Commission should be encouraged to remove economic incentives for creating overweight containers by removing tariffs on a per container basis for the higher density commodities. Tariffs based on weight are recommended.

California ports, in cooperation with local governments and railroad companies, are implementing or planning for the construction of on-dock or in-port rail facilities which will reduce the need for the drayage of intermodal containers on public roads. These efforts should be continued to be pursued and partnerships developed between the private and public sectors for the construction of these facilities.

- **Law enforcement actions**

The consensus reached by the AB 4672 Task Force is that the primary options to be implemented should be those that authorize the access to and use of intermodal industry private weight records. These options are estimated to be more cost effective than mobile street enforcement and constructing scale facilities, and they should produce less disruptions and delays for intermodal operations. However, varying combinations of the private weight records search and mobile street enforcement could be fashioned to meet different operational characteristics at the various marine and rail terminals. These law enforcement options must be fashioned within the context of federal government efforts in order to maintain a level playing field with other states with respect to the competitiveness issue. Specifically, it is recommended that:

1. The California Legislature enact legislation authorizing the access by the California Highway Patrol (CHP) to any weighing records of commercial vehicles transporting intermodal containers and piggyback trailers maintained by marine and rail terminals and that a civil penalty be defined for overweight intermodal shipments discovered by means of these records.

2. The California Legislature enact legislation authorizing the access by the CHP to import documents containing weight information on intermodal containers and piggyback trailers.

3. The authorizing legislation be written to include shipper's responsibility in overweight intermodal shipments by authorizing the CHP to cite the shipper for an overweight violation identified through a records search.

4. The California Legislature enact legislation authorizing any other action required by the CHP to fully implement the export records and import selective weighing alternatives as described in this report.

5. The CHP's budget be increased to implement the export records and import selective weighing alternatives as described in this report.

6. The CHP develop a computer data base of overweight citations with the capability of identifying habitual violators, including shippers, involved in overweight intermodal shipments.

7. Discussions be initiated by CHP and Caltrans staff with the Attorney General's Office to explore the possibility of the Attorney General's Office assisting in the prosecution of cases arising out of the implementation of the recommended alternatives and the prosecution of habitual violators under California's unfair business practice statutes.

8. The CHP contract with the Journal of Commerce for the Port Import/Export Reporting Service (PIERS) to aid in focusing its efforts for the export records enforcement alternative.

9. The California Legislature enact legislation giving a truck driver or carrier the opportunity to have a truck weighed

prior to being subject to enforcement action when scale facilities are reasonably available.

10. The intermodal industry reach agreement on the responsibility for complying with the CHP's requirement that an overload must be removed if it cannot be adjusted or an overweight permit obtained from the appropriate authority.

11. The timing for the CHP implementation of the recommended law enforcement alternatives be evaluated in light of current or planned activities at the federal level to minimize any economic consequences to California from the diversion of trade to other Pacific Coast ports.

This first report to the Legislature did not extensively explore law enforcement options for rail terminals and piggyback trailers. However, the recommended legislation authorizing access to private weight records includes rail terminals. With this additional option available, Caltrans will explore options at rail terminals in more detail in the 1990 report to the Legislature. However, the portable WIM/static weighing alternative could be implemented at rail terminals provided that resources are allocated to the CHP for its implementation. It is recommended that the AB 4672 Task Force continue to meet to address rail terminals in more detail and to review the measures being taken to implement the recommendations contained in this report.

## I. INTRODUCTION

Section 35580 of the California Vehicle Code (Chapter 865, Statutes of 1988-AB 4672, Katz) requires the California Department of Transportation (Caltrans), in cooperation with the California Highway Patrol (CHP), to develop a plan for implementing or identifying new or existing scale facilities at major intermodal terminals to enforce road weight limits on intermodal containers and piggyback trailers. The plan shall be developed in cooperation with a task force consisting of representatives of ports, local government, shippers, labor organizations, and the trucking, steamship, and railroad industries. The plan was originally to be submitted to the Legislature by August 1, 1989, but that date was extended to January 1, 1990. Caltrans shall thereafter submit annual reports describing its progress in developing the intermodal weight determination program, and its recommendations for the future of the program.

In order to obtain representation of the main players in the intermodal transportation chain and to meet the Task Force requirement of Section 35580 of the California Vehicle Code, the following organizations and companies were represented on the Task Force:

American President Lines
Atchison, Topeka, and Santa Fe Railway Company
California Association of Port Authorities
California Highway Patrol
California Manufacturers Association
California Teamsters Public Affairs Council
California Trucking Association
California United Terminals (Marine terminal)
Master Contracting Stevedore Association of the Pacific Coast, Inc.
Pacific Merchant Shipping Association
Southern Pacific Transportation Company
Union Pacific Railroad Company
Western Traffic Conference

It was the consensus of the Task Force that options other than scale facilities should be identified and evaluated.

The issue of overweight intermodal containers and piggyback trailers on public roads and highways has been receiving increasing attention at the state, federal and international levels and within the intermodal industry. The complexity of the intermodal transportation chain and the numerous parties involved add to the difficulty in dealing with the issue. In California, the Assembly Transportation Committee held a hearing on the issue on December 4, 1985 and presented the testimony received to the

California Legislature in a report titled Overweight Truck Containers, Who's Responsible? The letter of transmittal to the Legislature summarized the testimony as follows:

> "Recent reports have documented California highways are facing between $400 million to $1.3 billion in unmet road repair and maintenance needs annually. Contributing to this road deterioration are containers and piggyback trailers, which enter the state by ship, rail, or road, and are frequently overloaded by shippers of freight. These overweight trucks, in addition to being a safety hazard, have significant impact upon road deterioration - one 80,000-pound truck causes as much damage as 9,600 cars. Transportation Committee staff spot checks of weighmaster records found that 15 percent of the trucks in the sample had been certified in excess of the legal 80,000 pounds, indicating there is a problem statewide.
>
> "In response to the increase in overweight trucks and the damage they cause, the Assembly Committee on Transportation held an interim hearing in Oakland on December 4, 1985. The purpose of the hearing was to consider AB 1349 (M. Waters) and AB 1483 (Klehs), both of which proposed to require weighing of truck containers and piggyback trailers entering the state by rail or ship.
>
> "The Committee heard from a number of witnesses representing the various transportation modes, as well as, public agencies. A number of truck drivers testified that trucks routinely operate overweight, both in port areas and generally throughout the state, and that drivers receive a bonus to avoid highway patrol scales. These drivers indicated competition is so fierce that someone is always willing to haul overweight containers even if it means going around scales.
>
> "Shipping companies expressed concern that stringent enforcement of the truck weight laws in California could hurt the State's ability to compete with Pacific Northwest ports. The railroads and steamship lines also testified that the additional weighing and certification requirements, proposed by the two bills, should apply to all transportation companies, especially since the Committee's investigation had determined that trucks other than piggybacks and containers were also operating overweight".

The 1985 effort lead to this report required by AB 4672 (Katz, 1988). The report attempts to define the scope of overweight intermodal freight on public roads. Data that would accurately define the scope of the problem was not readily available. An overview of the factors that influence the issue is presented and the parties in the transportation chain are identified. Current activities that attempt to resolve the issue or portions of it are summarized. Options are identified and evaluated, and recommendations are presented.

## II. SCOPE OF INTERMODAL OVERWEIGHTS

### A. Highway Vehicle Weight Limits

In 1982, Congress established new federal mandatory weight limits. They are mandatory in the sense that if a state doesn't comply, the state will not receive any federal-aid Interstate construction funds. For the Interstate System, states are required to allow trucks to carry 20,000 pounds on a single axle, 34,000 pounds on tandem axles, and 80,000 pounds gross vehicle weight, subject to the federal bridge formula. Weight limitations on non-Interstate roads are controlled by the states. Due to grandfather provisions (state weight limits existing in 1956), some states have higher weight limitations on the Interstate System. Trucks meeting the federal maximum weight limitations must be provided reasonable access between the Interstate System and terminals and facilities for food, fuel, repairs, and rest.

The California vehicle weight limits are defined in the California Vehicle Code, beginning with Section 35550, as follows:

- Bridge formula limits are defined as set out in the table contained in Section 35551;
- Front steering axle limit of 12,500 pounds;
- Single axle limit of 20,000 pounds;
- Tandem axle limit of 34,000 pounds with the distance between the axles equal to or less than 8 feet;
- Gross weight limit of 80,000 pounds; and
- The load on one wheel or wheels supporting one end of an axle is limited to 10,500 pounds.

The bridge formula limits axle loads based on the distance between the axles. This spreads out the load when a vehicle crosses a bridge and maintains the stress in the bridge within design limits. The bridge formula weight limits are usually the first limits reached as the vehicle weight increases.

Cities and counties may, under the authority of various California Vehicle Code sections, establish higher or lower weight limits according to procedures and limits specified.

### B. The Impact of Highway Weight Limits on the Intermodal Industry

The intermodal industry transports freight in containers and piggyback trailers by ship, rail and truck. Loading cranes and other specialized equipment have been developed to transfer the containers and piggyback trailers between the various transportation modes. Trucks are needed to transport the containers and piggyback trailers:

- between the point where the container or trailer is loaded with cargo to a marine or rail terminal;
- between a marine and rail terminal; and/or
- between a marine or rail terminal and the point where the container or trailer is unloaded.

The intermodal industry is international in scope. In the United States, the use of railroads to transport containers across the United States, referred to as a land bridge, presents an option to using the Panama Canal. Thus, a container may travel thousands of miles, but a very small portion of the trip is by truck.

A comparison of the load weight limits for ship, rail, truck on public highways, container, and piggyback trailer reveals that the highway weight limits are controlling as illustrated by the following table.

| Container Size (ft) | Container Maximum Gross Weight Rating (pounds) | Typical Container Tare Weight (pounds) | Cargo Load Limit-Container Rating (pounds) | Average Cargo Load Limit-Federal Bridge Formula (pounds) |
|---|---|---|---|---|
| 20 | 44,800 | 5,000 | 39,800 | 38,000 |
| 40 | 67,200 | 8,000 | 59,200 | 44,000 |

Thus, the federal bridge formula weight limits are reached before the full weight rating of the container is reached. If the federal bridge formula is complied with, unused weight capacity is approximately 2,000 pounds for a 20-foot container and 15,000 pounds for a 40-foot container. These are based on "typical" container weight characteristics. With increasing use of 20-foot containers with a maximum gross weight rating of 52,900 pounds and containers larger than 40 feet in length, the unused container weight capacity will increase. These numbers will change in a specific situation depending on actual weights of the container, chassis, and truck tractor and the specific axle spacings.

The federal bridge formula weight limits listed above for cargo loads in 20 and 40-foot containers were defined in a demonstration weighing program performed in March 1988. These loadings and weighings were performed by the Bi-State Harbor Carriers Conference, the Atlantic Regional Committee of the Steamship Operators Intermodal Committee, Maher Terminal, Inc., and the Port Authority of New York and New Jersey. The loaded containers were weighed in combination with truck tractors and chassis typically used in intermodal transportation in the United States. The results of the axle loads weighed were compared against the federal bridge formula. It was concluded that the average cargo load limitations necessary to comply with the federal bridge formula were:

- 37,000 pounds of cargo in a 20-foot container on a 23-foot chassis;
- 38,000 pounds of cargo in a 20-foot container on a 27-foot chassis; and
- 44,000 pounds of cargo in a 40-foot container on a 40-foot chassis.

Another characteristic of the intermodal industry that complicates compliance with highway weight limits is the large number of parties in the intermodal transportation chain. These parties include shippers (foreign and domestic), consignees or the parties that ordered the goods, shippers agents, freight forwarders, customhouse brokers, ocean shipping lines, ports, terminal operators, railroads, truck companies, truck drivers, and intermodal equipment lessors. One issue involving a number of these parties is assigning responsibility for overweight citations and fines. Safety issues associated with overweight containers are also important. These include increased stopping distance, decreased vehicle control, and increased stress on the mechanical parts of the truck. The CHP and Caltrans enter the picture from a perspective of reducing road pavement damage and safety concerns.

Activities being undertaken by various intermodal industry groups and governmental agencies are summarized in the Appendix. This summary includes some events or activities, though not directly related, that may eventually affect the issues involved.

## C. The Amount of Overweight Intermodal Freight

### 1. FHWA's Analysis of the PIERS Data Base

Perhaps the most comprehensive analysis of overweight containers was recently completed by the Federal Highway Administration (FHWA) and reported in Analysis of Port Import/Export Reporting Service (PIERS) Data to Reveal Potentially Overweight Container Movements on America's Highways, March 20, 1989. The study design is summarized as follows:

- The data base utilized was the Journal of Commerce PIERS master file consisting of data recorded from import manifests and export bills of lading for containerized freight moving through U.S. ports.

- The sample selected from the PIERS data base was all container shipments moving through U.S. ports on the 15th day of each month from October 1987 through September 1988.

- Only 20-foot and 40-foot container movements were considered since they represent approximately 91 percent of all U.S. container movements.

- As described in Section II-B above, test loadings and weighings of containers using typical loading practices concluded that cargo loads in 20-foot containers on 23-foot chassis should not exceed 37,000 pounds, cargo loads in 20-foot containers on 27-foot chassis should not exceed 38,000 pounds, and cargo loads in 40-foot containers on 40-foot chassis should not exceed 44,000 pounds. These average cargo load limits were based on compliance with the federal bridge formula.

- The cargo loads identified in the PIERS sample were compared to the average cargo load limits of 38,000 pounds for a 20-foot container and 44,000 pounds for a 40-foot container. If the PIERS data exceeded the average cargo load limits, this was deemed a "potentially overweight container".

The results of the analysis covering the sample of United States container movements were as follows:

### EXHIBIT 1

### POTENTIALLY OVERWEIGHT CONTAINERS
### FEDERAL BRIDGE FORMULA WEIGHT VIOLATION RATES

| | CONTAINER SIZE | | |
|---|---|---|---|
| | 20-Foot | 40-Foot | Total |
| Exports Potentially Overweight | 7,709 | 15,506 | 23,215 |
| Number In Sample | 19,259 | 40,408 | 59,667 |
| Export Potential Violation Rate | 40% | 38% | 39% |
| Imports Potentially Overweight | 7,448 | 4,527 | 11,975 |
| Number In Sample | 18,588 | 26,608 | 45,196 |
| Import Potential Violation Rate | 40% | 17% | 26% |
| Total Potentially Overweight | 15,157 | 20,033 | 35,190 |
| Total In Sample | 37,847 | 67,016 | 104,863 |
| Total Potential Violation Rate | 40% | 30% | 34% |

The potential violation rate for exports (39%) is 50% higher than the potential violation rate for imports (26%). The potential violation rate for imports in 40-foot containers is substantially lower than the potential violation rate for the other categories.

A measure of the severity of the federal bridge formula weight violations was presented in FHWA's report as follows:

EXHIBIT 2

WEIGHT DISTRIBUTIONS OF POTENTIALLY OVERWEIGHT CONTAINERS

| | 20-FOOT CONTAINER | | 40-FOOT CONTAINER | |
|---|---|---|---|---|
| | Under 2,000 lbs. Overweight | Under 10,000 lbs. Overweight | Under 2,000 lbs. Overweight | Under 10,000 lbs. Overweight |
| Export | 45% | 97% | 32% | 83% |
| Import | 46% | 98% | 56% | 97% |

In terms of severity of violation, the 40-foot export container had the highest percentage for the number of potential overweights exceeding 2,000 pounds overweight (68%) and exceeding 10,000 pounds overweight (17%).

The number of overweight containers aggregated by Atlantic, Gulf, and Pacific Coast ports is presented below.

EXHIBIT 3

POTENTIALLY OVERWEIGHT CONTAINERS BY U.S. COAST

| | 20-FOOT CONTAINER | | | 40-FOOT CONTAINER | | | Total |
|---|---|---|---|---|---|---|---|
| | Atlantic | Gulf | Pacific | Atlantic | Gulf | Pacific | |
| Export | 3,530 | 1,159 | 2,994 | 6,663 | 1,415 | 7,398 | 23,159 |
| Import | 4,536 | 818 | 1,946 | 3,212 | 384 | 811 | 11,707 |
| Total | 8,066 | 1,977 | 4,940 | 9,875 | 1,799 | 8,209 | 34,866 |

| U.S. Coast | Total Potentially Overweight Containers | Percent of Total Overweights In PIERS Sample |
|---|---|---|
| Atlantic | 17,941 | 51% |
| Gulf | 3,776 | 11% |
| Pacific | 13,149 | 38% |
| Total | 34,866 | 100% |

Note: Total differs from Exhibit 1 since Exhibit 1 includes data for Halifax, Nova Scotia and Vancouver, British Columbia.

EXHIBIT 4

POTENTIALLY OVERWEIGHT CONTAINERS ON THE PACIFIC COAST

(Percentages are based on the total figure of 13,149)

| | 20-FOOT CONTAINER | 40-FOOT CONTAINER | Total |
|---|---|---|---|
| Export | 2,994 (23%) | 7,398 (56%) | 10,392 (79%) |
| Import | 1,946 (15%) | 811 (6%) | 2,757 (21%) |
| Total | 4,940 (38%) | 8,209 (62%) | 13,149(100%) |

A violation rate by U.S. Coast was not presented in the FHWA report. The 40-foot export container represents 56% of the potentially overweight containers on the Pacific Coast. For the Pacific Coast, exports are 79% of the potentially overweight containers.

It must be emphasized that all of the numbers presented in Exhibits 1 through 4 were identified by FHWA as "potentially overweight containers" and are based on average cargo load limits established by the Bi-State Harbor Carriers Conference demonstration weighing program. The FHWA results involved no actual weighing of trucks hauling containers. Single axle, tandem axle, and gross weight limits were not addressed in the FHWA analysis, but a bridge formula violation is usually the first to be encountered with increasing weight of the truck. If a bridge violation is sufficiently close to the limit, it may be made legal by adjusting the fifth wheel setting, by adjusting the kingpin-to-rear axle distance if sliding rear axles are available on the chassis, by using a longer chassis, or by using a chassis with triple axles (See Exhibit 5).

## 2. Additional Information on Overweights

The literature on truck overweights provides some information on weight limit violation rates. This information includes:

- Ten to 20% of all trucks over 10,000 pounds are operating overweight (Effects of Permit and Illegal Overloads on Pavements, National Cooperative Highway Research Program, Synthesis 131, 1987).

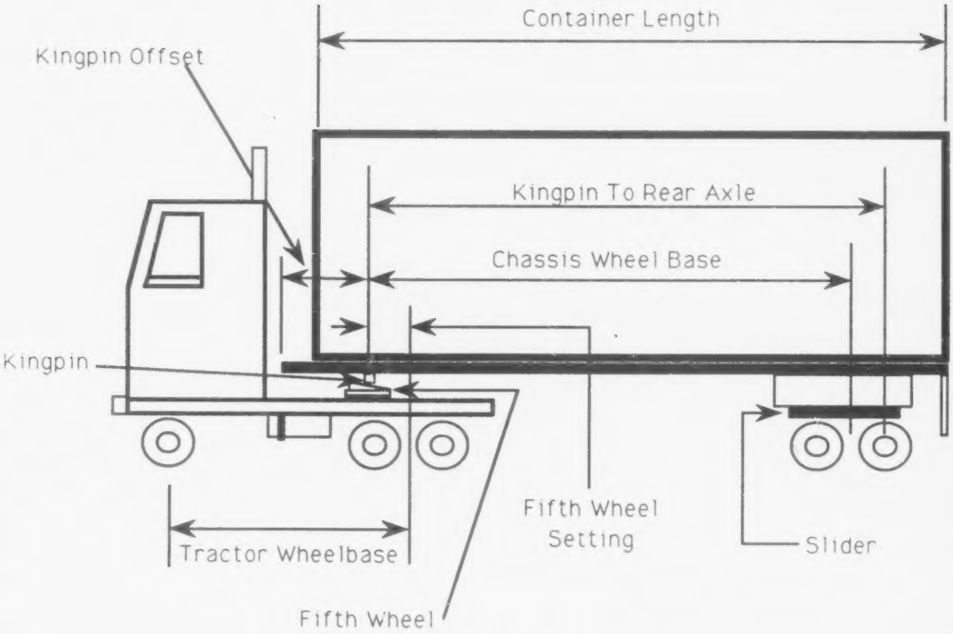
- In California for fiscal year 1987, 0.8% of all vehicles weighed were cited for being overweight. The national figure is 0.6% (Overweight Vehicles - Penalties & Permits, FHWA, January 1989). This points to scale avoidance by overweight trucks.

- Of the 79,299 overweight citations issued in California in fiscal year 1987 and as reported in Overweight Vehicles - Penalties & Permits, FHWA, January 1989, 82% were axle weight violations, 11% were gross weight violations, and 7% were bridge formula violations. These percentages are not a reflection of the actual distribution of overweights among the different types of weight limits, but a reflection of the enforcement practices. The bridge formula weight limits are usually the first limits reached as the vehicle weight increases, but the citation percentages do not reflect this. This is probably due to the complexity and additional effort required to check for a bridge formula violation.

As reported in Overweight Truck Containers, Who's Responsible, Assembly Transportation Committee hearing, December 4, 1985, page 84: "The CHP weighed 29,741 trucks with portable scales in 1984, and issued 10,829 overweight citations (36.4%). Of the 1,068 trucks weighed by officers stationed in CHP offices in Westminster, South Los Angeles, and Oakland, 769 (72%) were

EXHIBIT 5

## TRUCK TERMINOLOGY


Container Length
Kingpin Offset
Kingpin To Rear Axle
Chassis Wheel Base
Kingpin
Fifth Wheel Setting
Slider
Tractor Wheelbase
Fifth Wheel

overweight. California Highway Patrol letter to Assemblyman Richard Katz". Caltrans staff discussed the basis of selection for weighing with CHP officers assigned to the port areas. The CHP officers, on the basis of their experience, use indicators such as the amount of tire surface in contact with the pavement and the sound of the engine to select trucks for weighing. The 72% figure may be more a reflection of the officers' expertise than an accurate violation rate for the total population of trucks hauling intermodal containers in the vicinity of the ports.

In April 1989, Caltrans staff used portable weigh-in-motion (WIM) equipment to weigh vehicles for one day each in the Ports of Oakland, Long Beach, and Los Angeles. A capacitive weighpad (electrical capacitance changes with applied load) and two inductive loop vehicle detectors were secured to the road surface with adhesive strips. The weighpad measures axle loads to an accuracy of plus or minus 8 percent. By comparison, the CHP requires for enforcement purposes that platform scales vary in accuracy by no more than 200 pounds and portable scales vary in accuracy by no more than 2 percent. For permanent weigh-in-motion equipment installed on state highways, Caltrans specifications require an accuracy of plus or minus 5 percent. The portable WIM weighings of 445 trucks hauling loaded containers at the three ports produced a combined weight limit violation rate of 16 percent. Factors that influenced the results included:

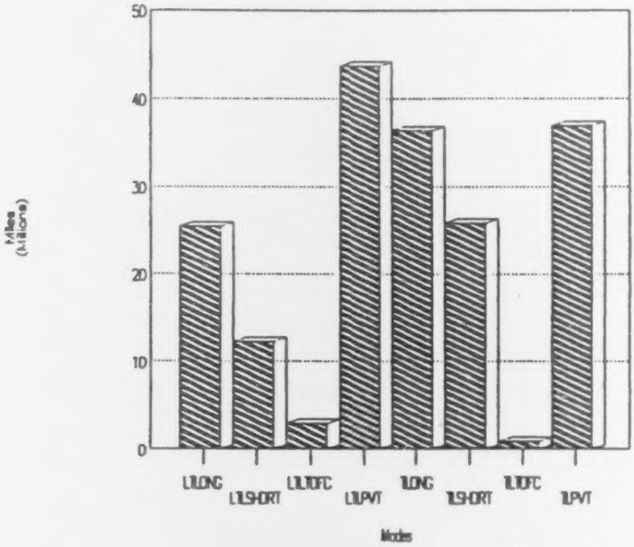
- The portable WIM equipment is sensitive to pavement conditions and the speed of the vehicles.
- Due to the spread out nature of the marine terminals, avoidance routes are available. The CHP informed Caltrans staff that truck drivers informed other drivers of the weighing operation via CB radio and that the avoidance routes were being utilized by some drivers.

The portable WIM weighings should be considered supplemental to other data since they are limited to one day at one location within each port complex.

The following information is presented to place the issue of overweight intermodal shipments into perspective as far as truck miles of travel covering the entire trucking industry is concerned. As reported in the Truck Movement Study, Southern California Association of Governments, June 1988, the Ports of Los Angeles and Long Beach are responsible for roughly 7 percent of the truck traffic in the Los Angeles region. Exhibits 6 through 8 are taken from the Urban Freeway Gridlock Study: Technical Report, 1988, prepared by Cambridge Systematics, Inc., for Caltrans. These exhibits are for the regions of Los Angeles,

EXHIBIT 6

## TRUCK MILES OF TRAVEL BY MODE
## LOS ANGELES

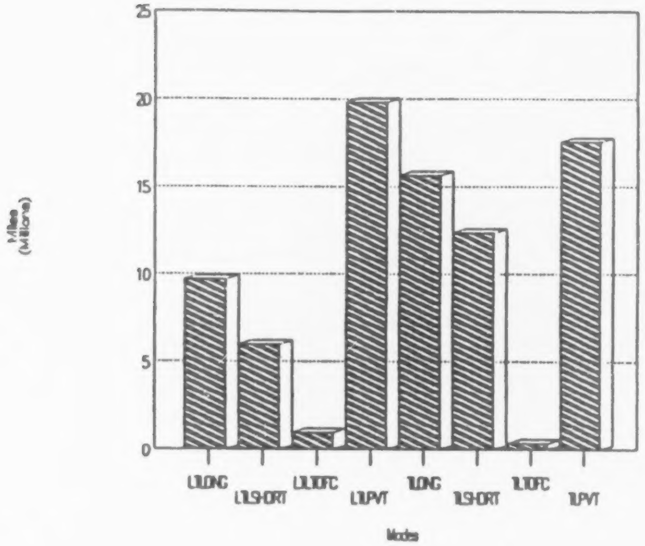


Key:

| | |
|---|---|
| LTLONG | Less-Than-Truck-Load Long Haul Interstate Carrier |
| LTLSHORT | Less-Than-Truck-Load Short Haul Intrastate Carrier |
| LTLTOFC | Less-Than-Truck-Load "Trailer On Flat Car" -- Intermodal rail carriage of freight forwarder shipments |
| LTLPVT | Less-Than-Truck-Load Private Carrier -- Private Carriers carrying less-than-truckload shipments |
| TLONG | Truck-Load Long Haul Interstate Carrier |
| TLSHORT | Truck-Load Short Haul Intrastate Carrier |
| TLTOFC | Truck-Load "Trailer On Flat Car" -- Conventional piggyback full-trailer shipments |
| TLPVT | Truck-Load Private Carrier -- Private Carriers carrying truckload shipments |

## EXHIBIT 7

## TRUCK MILES OF TRAVEL BY MODE
## SAN FRANCISCO

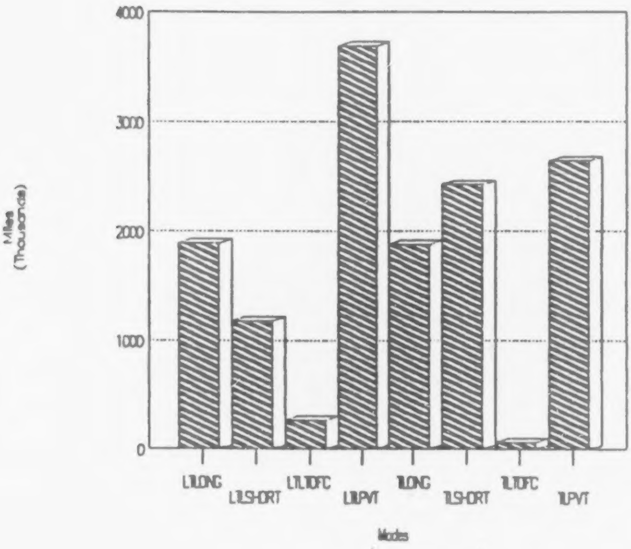


Key:

| | |
|---|---|
| LTLONG | Less-Than-Truck-Load Long Haul Interstate Carrier |
| LTLSHORT | Less-Than-Truck-Load Short Haul Intrastate Carrier |
| LTLTOFC | Less-Than-Truck-Load "Trailer On Flat Car" -- Intermodal rail carriage of freight forwarder shipments |
| LTLPVT | Less-Than-Truck-Load Private Carrier -- Private Carriers carrying less-than-truckload shipments |
| TLONG | Truck-Load Long Haul Interstate Carrier |
| TLSHORT | Truck-Load Short Haul Intrastate Carrier |
| TLTOFC | Truck-Load "Trailer On Flat Car" -- Conventional piggyback full-trailer shipments |
| TLPVT | Truck-Load Private Carrier -- Private Carriers carrying truckload shipments |

EXHIBIT 8

## TRUCK MILES OF TRAVEL BY MODE
## SAN DIEGO



Key:

| | |
|---|---|
| LTLONG | Less-Than-Truck-Load Long Haul Interstate Carrier |
| LTLSHORT | Less-Than-Truck-Load Short Haul Intrastate Carrier |
| LTLTOFC | Less-Than-Truck-Load "Trailer On Flat Car" -- Intermodal rail carriage of freight forwarder shipments |
| LTLPVT | Less-Than-Truck-Load Private Carrier -- Private Carriers carrying less-than-truckload shipments |
| TLONG | Truck-Load Long Haul Interstate Carrier |
| TLSHORT | Truck-Load Short Haul Intrastate Carrier |
| TLTOFC | Truck-Load "Trailer On Flat Car" -- Conventional piggyback full-trailer shipments |
| TLPVT | Truck-Load Private Carrier -- Private Carriers carrying truckload shipments |

San Francisco Bay Area, and San Diego. As the exhibits show, intermodal truck shipments are a small percentage of the total truck miles of travel.

## D. Intermodal Industry Trends Affecting Overweights

### 1. Historical Trends

The next five exhibits provide historical information on the intermodal industry. Some general observations and conclusions that may be drawn from these and other information sources are:

- From 1978 to 1988, intermodal railroad loadings increased from 3.2 million to 5.7 million trailers and containers. About 60 percent of the loadings in 1988 were trailer on flat car (TOFC). With the introduction of doublestack container trains in the 1980's, container on flat car (COFC) loadings showed substantial growth.
- The Ports of Long Beach, Los Angles, and Oakland rank in the top 20 world ports for container traffic.
- In 1986, the Ports of Long Beach, Los Angeles, and Oakland ranked 2, 3, and 4 respectively in North America in container traffic.
- If liquid bulk is excluded (primarily oil moved by pipelines), cargo shipped in containers is the predominate mode of cargo shipment through California ports.
- In 1988 (disregarding the slightly different reporting periods), the Ports of Long Beach, Los Angeles, and Oakland handled 1.9 million loaded containers. Of these containers, 46 percent were in export trade and 54 percent were in import trade.

EXHIBIT 9

## UNITED STATES RAILROAD LOADINGS OF PIGGYBACK TRAILERS & INTERMODAL CONTAINERS

| Year | Trailers & Containers |
|---|---|
| 1955 | ---- |
| 1960 | ---- |
| 1965 | 1,664,929 |
| 1970 | 2,363,200 |
| 1975 | 2,238,117 |
| 1978 | 3,177,291 |
| 1979 | 3,278,163 |
| 1980 | 3,059,402 |
| 1981 | 3,150,522 |
| 1982 | 3,396,973 |
| 1983 | 4,083,938 |
| 1984 | 4,569,094 |
| 1985 | 4,605,099 |
| 1986 | 5,005,968 |
| 1987 | 5,155,737 |

Source: Railroad Facts, 1988 Edition, Association of American Railroads, November 1988

Note: As reported in Modern Railroads, May 1989, 5.7 million trailers and containers were moved in intermodal service in 1988.

EXHIBIT 10

## WORLD CONTAINER PORT TRAFFIC

| 1986 No. | Port | 1986 TEU | 1985 TEU | (1985 No.) | Country/Region |
|---|---|---|---|---|---|
| 1 | Rotterdam | 2,939,200 | 2,654,906 | (1) | Netherlands |
| 2 | Hong Kong | 2,774,025 | 2,288,953 | (3) | Hong Kong |
| 3 | Kaohsiung | 2,482,468 | 1,900,853 | (4) | Taiwan |
| 4 | New York/ New Jersey | 2,340,000 | 2,367,000 | (2) | USA |
| 5 | Singapore | 2,203,100 | 1,698,800 | (6) | Singapore |
| 6 | Kobe | 1,882,921 | 1,857,397 | (5) | Japan |
| 7 | Keelung | 1,587,328 | 1,157,840 | (11) | Taiwan |
| 8 | Busan | 1,448,225 | 1,115,000 | (12) | South Korea |
| 9 | Long Beach | 1,394,453 | 1,171,548 | (9) | USA |
| 10 | Los Angeles | 1,324,547 | 1,103,722 | (13) | USA |
| 11 | Antwerp | 1,313,155 | 1,243,009 | (8) | Belgium |
| 12 | Yokohama | 1,310,498 | 1,327,352 | (7) | Japan |
| 13 | Hamburg | 1,245,964 | 1,158,776 | (10) | West Germany |
| 14 | Tokyo | 1,082,049 | 1,004,390 | (14) | Japan |
| 15 | Bremen/ Bremerhaven | 1,000,274 | 986,265 | (15) | West Germany |
| 16 | Oakland | 925,089 | 855,642 | (17) | USA |
| 17 | San Juan | 899,052 | 881,629 | (16) | Puerto Rico |
| 18 | Felixstowe | 895,244 | 725,820 | (19) | UK |
| 19 | Seattle | 850,504 | 845,027 | (18) | USA |
| 20 | Tacoma | 666,152 | 504,807 | (24) | USA |

Source: Containerisation International Yearbook 1988

TEU: Twenty-foot equivalent unit. The common unit used in measuring the capacity of a container vessel or terminal. Also used to measure productivity. A 40-foot container is equal to two TEUs.

## EXHIBIT 11

## LEADING NORTH AMERICAN CONTAINER PORTS

| No. 1986 | (1985) | Port | 1986 TEU |
|---|---|---|---|
| 1 | (1) | New York/New Jersey | 2,340,000 |
| 2 | (2) | Long Beach | 1,394,453 |
| 3 | (3) | Los Angeles | 1,324,547 |
| 4 | (4) | Oakland | 925,089 |
| 5 | (5) | Seattle | 850,504 |
| 6 | (7) | Tacoma | 666,152 |
| 7 | (6) | Baltimore | 532,232 |
| 8 | (8) | Montreal | 531,525 |
| 9 | (11) | Charleston | 506,232 |
| 10 | (10) | Savannah | 501,395 |

Source: Containerisation International Yearbook 1988

TEU: Twenty-foot equivalent unit. The common unit used in measuring the capacity of a container vessel or terminal. Also used to measure productivity. A 40-foot container is equal to two TEUs.

## EXHIBIT 12
## MOVEMENT OF CARGO IN CONTAINERS THROUGH CALIFORNIA PORTS
## 1988 FISCAL YEAR

METRIC REVENUE TONS[1]

| PORT | CONTAINERS | LIQUID BULK | DRY BULK | BREAK BULK & NEO BULK | AUTOMOBILES | TOTAL | % IN CONTAINERS | % OF CONTAINER TOTAL[7] |
|---|---|---|---|---|---|---|---|---|
| Long Beach | 26,666,000 | 27,388,000 | 6,101,000 | 2,978,000 | 464,000 | 63,597,000 | 42% | 37.8% |
| Los Angeles | 28,800,000[3] | 23,900,000 | 3,200,000 | 3,200,000[6] | 1,500,000 | 60,600,000 | 48% | 40.8% |
| Oakland[2] | 12,360,000 | 244,000 | 657,000 | 916,000[5] | | 14,177,000 | 87% | 17.5% |
| San Diego | 112,000 | 89,000 | 509,000 | 453,000 | | 1,163,000 | 10% | 0.2% |
| San Francisco | 2,619,000 | 165,000 | 38,000 | 337,000[5] | | 3,159,000 | 83% | 3.7% |
| Total[4] | 70,557,000 | | | | | | | 100.0% |

1 - Metric ton equals 2,204.6 pounds.
2 - 1987 calendar year.
3 - Calculated by multiplying 1.6 million 20-foot equivalent units (TEU) by 18 metric revenue tons per TEU.
4 - Other ports not listed have a very small amount of container movements.
5 - Includes automobiles.
6 - Calculated by subtracting containerized cargo from total general cargo tonnage, which amounted to 32 million tons.
7 - See Footnote 2, not technically correct since data does not cover exactly the same time period.

Source: Geraldine Knatz, Ph.D., Director of Planning, Port of Long Beach.
The last two columns were not part of the original data source.

Note: The liquid bulk commodities for the Ports of Long Beach and Los Angeles are principally Alaskan crude oil which is moved from the Ports by pipelines (Truck Movement Study, SCAG, June 1988).

## EXHIBIT 13
## LOADED CONTAINER ACTIVITY FOR THE PORTS OF
## LONG BEACH, LOS ANGELES, AND OAKLAND

| PORT/YEAR | EXPORTS | | | | IMPORTS | | | | TOTAL | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Container Size | | Total | | Container Size | | Total | | Container Size | | Total |
| | 20' | 40' | Other | Exports | 20' | 40' | Other | Imports | 20' | 40' | Other | Port |
| Long Beach (Fiscal Year) | | | | | | | | | | | | |
| 1986 | 39,435 | 116,821 | * | 156,256 | 99,416 | 288,301 | * | 387,717 | 138,851 | 405,122 | * | 543,973 |
| 1987 | 49,605 | 143,504 | * | 193,109 | 117,697 | 316,041 | * | 433,738 | 167,302 | 459,545 | * | 626,847 |
| 1988 | 62,728 | 180,080 | * | 242,808 | 120,307 | 314,449 | * | 434,756 | 183,035 | 494,529 | * | 677,464 |
| Los Angeles (Calendar Year) | | | | | | | | | | | | |
| 1986 | 47,820 | 122,849 | 41,014 | 211,683 | 109,671 | 251,624 | 38,440 | 399,735 | 157,491 | 374,473 | 79,454 | 611,418 |
| 1987 | 56,176 | 168,483 | 40,672 | 265,331 | 118,994 | 300,864 | 27,627 | 447,485 | 175,170 | 469,347 | 68,299 | 712,816 |
| 1988 | 77,774 | 206,136 | 40,792 | 324,702 | 121,566 | 314,029 | 27,465 | 463,060 | 199,340 | 520,165 | 68,257 | 787,762 |
| Oakland (Calendar Year) | | | | | | | | | | | | |
| 1986 | 103,577 | 159,360 | * | 262,937 | 76,436 | 98,113 | * | 174,549 | 180,013 | 257,473 | * | 437,486 |
| 1987 | 108,569 | 178,826 | * | 287,395 | 65,458 | 102,033 | * | 167,491 | 174,027 | 280,859 | * | 454,886 |
| 1988 | 104,758 | 200,911 | * | 305,669 | 57,910 | 83,056 | * | 140,966 | 162,668 | 283,967 | * | 446,635 |

* Other container sizes were converted to 20-foot or 40-foot equivalents
Source: Ports of Long Beach, Los Angeles and Oakland.

## 2. Trends and New Developments Affecting Overweights

### Larger capacity ports, ships, and trains

Ocean carriers are putting into service container ships capable of transporting 4,000 twenty-foot equivalent units (TEU; a 40-foot container is equivalent to 2 TEU's). These larger ships are limiting their ports-of-call to only a few selected ports. These are the larger ports and this operational preference is referred to as "load center port". This concentration of containers through fewer ports has now been teamed with containers stacked two-high, or doublestacked, on container unit trains.

These developments have resulted in, and will continue to produce, a concentration of container traffic at a reduced number of points in the intermodal transportation chain. About 90 percent of the container market on the Pacific Coast moves through the Ports of Long Bench, Los Angeles, Oakland, Portland, Tacoma, and Seattle (U. S. Census Bureau, June 1988). In the 10 years prior to 1988, rail terminal consolidation has reduced the number of rail terminals from 1,128 to 306 (Transport Topics, April 18, 1988, p. 34). See Exhibit 14 for a listing of the rail intermodal facilities in California.

For the Ports of Long Beach and Los Angeles, the primary truck movements of containers are to Southern Pacific's Intermodal Container Transfer Facility in Wilmington (a distance of about 5 miles) and to Union Pacific's East Los Angeles Yard in Commerce and Santa Fe's Hobart Yard in Vernon ( a distance of about 25 miles from each rail terminal to the ports). A rough split of the containers moving to and from the ports to these rail facilities is 400,000 containers per year to Southern Pacific, 250,000 containers per year to Union Pacific, and 250,000 containers per year to Santa Fe. These numbers do not include the containers moved by truck to or from local and regional destinations or origins. In addition, Southern Pacific's Los Angeles Transportation Center in downtown Los Angeles handles about 150,000 intermodal shipments per year. Most of these are piggyback trailers.

For the Port of Oakland, the Southern Pacific and Union Pacific railroads both have intermodal yards located in the marine terminal area. The marine terminals stretch across a length of about 5 miles with the rail intermodal yards located in the approximate middle of the 5 miles. The Santa Fe railroad has its intermodal yard located about 12 miles to the north of the port in Richmond. It is estimated that 40-50% of the container traffic moved through the Port of Oakland enters or leaves the marine terminal complex by rail. This mode split by rail is increasing on an annual basis. The other 60-50% is trucked to or from local and regional destinations or origins, or trucked to the Santa Fe intermodal yard.

## EXHIBIT 14
## RAIL INTERMODAL FACILITIES

*Source: The Official Intermodal Guide, Fall/Winter 1988*

| | Santa Fe | Southern Pacific | Union Pacific |
|---|---|---|---|
| Bakersfield | X | X | |
| Barstow | X | | |
| Blythe | X | | |
| Colton | | X | |
| Fresno | X | X | |
| Modesto* | | | X |
| Los Angeles | X | X | X |
| Oakland | X | X | X |
| Richmond | X | | |
| Roseville | | X | |
| San Bernardino | X | | |
| San Diego | X | | |
| Stockton | X | X | X |

* Modesto and Empire Traction Company also operates a facility in Modesto.

In conclusion, the increasing use of load center ports, larger container ships, and doublestack trains will continue to concentrate intermodal shipments at large intermodal exchange points in the transportation chain. For weight limit enforcement efforts, this points to concentrating enforcement strategies and resources at these key exchange points.

### **The domestic market**

Most commentators on the intermodal industry agree that the containerization of export and import trade will continue to grow. This is due to general economic growth worldwide and a continued growth in the percentage of cargo shipped via containers. In addition, the containerization of the domestic transportation market is receiving increasing attention. The doublestack train has been cited as a means of making inroads into the domestic market. Since imports exceed exports, intermodal trains moving east from the Pacific Coast with full containers are returning to the Pacific Coast with a substantial number of empty containers. This partially empty backhaul is being promoted for the domestic market. Domestic market shipments in doublestack container trains amounted to approximately 200,000 containers in 1987 (Transport Topics, April 18, 1988, p. 34).

Railroads are cost competitive with long-haul trucking at shipping distances of about 400 to 500 miles with the cost advantage to railroads at distances greater than 400 to 500 miles. The service advantages provided by trucking have, to date, generally been cited by domestic shippers as the reasons they are reluctant to switch to rail intermodal. Service considerations include responsiveness, equipment needs, service reliability, and damage free transit. Just as the trucking industry has moved to 48-foot and 53-foot semitrailers, operators of doublestack container trains have started to invest in 48-foot and 53-foot containers to attract domestic shippers in high-density, long-haul freight lanes. Since domestic containers have no reason to be in a port, the port operators would want the railroads to drop off the domestic containers at a rail terminal prior to arriving at or near the port. This point becomes important in view of plans by ports to develop on-dock or in-port rail facilities.

To the extent that containers make any advances in the domestic market, there will also exist the potential for additional violations of the highway weight limits, especially in light of the larger containers being purchased to serve the domestic market. These domestic container shipments should also increase container traffic at rail terminals located at non-port sites.

## III. CURRENT WEIGHT ENFORCEMENT PROGRAMS AND PRACTICES

### A. Federal

### 1. Federal Highway Administration (FHWA)

As described in Section II-A, the Surface Transportation Assistance Act of 1982 established new weight limits for the Federal-aid Interstate System. Weight limitations on non-Interstate roads are controlled by the states. The enforcement of all weight limits are performed by state law enforcement agencies.

FHWA has defined in regulations issued per 23CFR Part 657-Certification of Size and Weight Enforcement the state requirements for administering a program of vehicle size and weight enforcement on federal-aid highways. The federal-aid highways include the interstate, primary, urban, and secondary systems. The regulations require each state to develop a plan for the maintenance of an effective enforcement process. The plan shall describe the procedures, resources, and facilities that the state intends to devote to the enforcement of its vehicle size and weight laws. Each state plan is submitted for FHWA's approval on an annual basis. The plan then serves as a basis by which the annual certification of enforcement will be judged for adequacy.

The plan shall discuss the following subjects:

- Facilities and resources. At least two of the following devices shall be used in sufficient quantity to cover the federal-aid highway system: fixed platform scales; portable wheel weigher scales; semi-portable or ramp scales; or weigh-in-motion (WIM) equipment. Also described shall be the staff assigned to the program, identified by specific agency.

- Practices and procedures. This includes the proposed plan of operation, including geographical coverage and hours of operation. Policy and practices with respect to overweight violators, including off-loading requirements for divisible loads, shall be described. Also included are policies and practices with respect to penalties and special permits for overweights.

- The plan shall be updated annually based on experience and new developments in the enforcement program.

Failure of a state to submit or update a plan is deemed to be a failure to certify. To meet the certification requirement, each state is to certify to the Federal Highway Administrator before

January 1 of each year that it is enforcing all state laws respecting vehicle size and weight permitted on the federal-aid highway system. For certification purposes, the regulations require various type of data on the number of vehicles weighed, citations issued, civil assessments, incidences of load shifting or off-loading of excess weight categorized by type of weight limit violation, and the number of permits issued for overweight loads. The sanction for not meeting the requirements of 23 CFR Part 657 is a reduction by 10% of the federal-aid highway funds apportioned to the state for the next fiscal year. For California, the plan update and certification requirements are prepared by the CHP.

### 2. Occupational Safety and Health Administration (OSHA)

For the safety of employees, OSHA has issued regulations contained in 29 CFR Part 1917-Marine Terminals that apply to employment within a marine terminal. For terminals handling intermodal containers or roll-on and roll-off operations, the regulations require that every intermodal container shall be permanently marked with its tare weight, its maximum cargo weight, and its maximum gross weight. For the lifting of loaded containers, the actual gross weight shall be plainly marked or its actual gross weight shall be capable of determination from records such as the cargo stowage plan.

Every export loaded container must be weighed, either at the marine terminal or elsewhere, to obtain its actual gross weight. The actual gross weight weighing results shall be provided to the crane or other hoisting equipment operator and signalman. If the terminal has no scales, the actual gross weight may be calculated on the basis of the container's contents and the container's tare weight. The weight of loaded import containers shall be determined 1) by weighing, or 2) on the basis of the container's contents and the container's tare weight, or 3) by shipping documents. Any scale used shall meet the accuracy standards of the state or local public authority in which the scale is located.

The regulations require that every crane shall be fitted with a load indicating device or alternative device which shall provide a direct indication in the cab of the actual weight hoisted, or indications in the cab according to the radius and load at the moment, or a direct means to prevent an overload from occurring. The accuracy of the devices shall be within the range from no less than 95 percent (5 percent overload) to 110 percent (10 percent underload) of the actual true total load.

In Europe, the weighing devices are installed on cranes by the larger companies to detect overweight containers before they are placed on a truck (Transport Topics, June 12, 1989, p. 17). The shipper is billed for the repacking, but collecting the additional charges may prove difficult and court action may be required. Great Britain is addressing the issue of overweights by installing weigh-in-motion (WIM) facilities around ports, using the WIM facilities to screen trucks for weighing at static scales, establishing 24-hour courts to negate delay complaints from foreign drivers, and by establishing stiff fines.

## B. State

### 1. Applicable California Statutes

California Vehicle Code

The vehicle weight limits defined in the statutes are stated in Section II-A. Other applicable statues are described in this section.

The CHP is legally responsible for vehicle size and weight enforcement on all public roads in the unincorporated areas of California and on all freeways. All other public roadways come under the jurisdiction of local law enforcement agencies who are, in turn, responsible for any size and weight enforcement within those jurisdictions. However, the CHP has the option of extending its weight enforcement activities to city streets. The CHP has no weight enforcement jurisdiction over private roads.

The California Vehicle Code defines certain procedures to be followed in vehicle weight limit enforcement. These code sections are expanded upon and the procedures more fully developed in the CHP's Commercial Enforcement Manual.

A brief summary of the more relevant Vehicle Code sections is presented.

Section 2802: Any traffic officer having reason to believe that a vehicle is overweight may require the vehicle to be weighed. Portable or stationary scales may be used. The officer may require that the vehicle be driven to the nearest scale provided the scale is within 5 miles of the point the vehicle was initially stopped.

Section 2809: All scales used by the CHP to enforce weight limits shall be certified as to accuracy at least once in each calendar year by the Bureau of Weights and Measures of the Department of Food and Agriculture or by a county sealer of weights and measurers. The Commercial Enforcement Manual (P. 3-19) states that no enforcement document shall be issued on the basis of a weight certificate carried by the driver of a vehicle unless the officer has observed the weighing and the issuance of the certificate.

Section 2803: The traffic officer may require the driver to reload or remove part of the load to reduce it to the allowable weight limits. This must be done at a suitable place that is reasonably safe. It is CHP policy not to permit the vehicle to proceed until the overload has been removed, adjusted, or an overweight permit obtained from the appropriate authority (Commercial Enforcement Manual, P. 3-19).

Section 40000.23: A violation of the weight limits is a misdemeanor, and not an infraction, except in cases of weight violations where the amount of excess weight is less than 4,501 pounds.

Section 42030: Defines weight violation fines as follows:

| Pounds of excess weight | Fine |
|---|---|
| 0- 1,000 | $20 |
| 1,001- 1,500 | 30 |
| 1,501- 2,000 | 40 |
| 2,001- 2,500 | 55 |
| 2,501- 3,000 | 85 |
| 3,001- 3,500 | 105 |
| 3,501- 4,000 | 125 |
| 4,001- 4,500 | 145 |
| 4,501- 5,000 | 175 |
| 5,001- 6,000 | 0.04 each lb. |
| 6,001- 7,000 | 0.06 each lb. |
| 7,001- 8,000 | 0.08 each lb. |
| 8,001- 10,000 | 0.15 each lb. |
| 10,001 and over | 0.20 each lb. |

Section 42031: When more than one overweight violation exists on a vehicle or combination of vehicles, only one violation shall be charged on an enforcement document (Commercial Enforcement Manual, P. 3-18).

The issue of assigning responsibility for an overweight truck, citation, and fine between an employee/driver and employer/owner is addressed in the Vehicle Code. In addition, the Vehicle Code uses language such as "any other person". Overweight citations and fines are the responsibility, initially, of the truck driver. Vehicle Code Section 40003 authorizes the owner of the vehicle to be named as a codefendant. Vehicle Code Section 40001(a) states "It is unlawful for the owner, or any other person, employing or otherwise directing the driver of any vehicle to cause the operation of the vehicle upon a highway in any manner contrary to law". Vehicle Code Section 40001(d) authorizes any other person who directs the loading, maintenance, or operation of the vehicle to be named as a codefendant.

## California Business and Professions Code

California Business and Professions Code Section 17200 defines "unfair competition" to include "... unlawful, unfair or fraudulent business practice ...". The remedies available include:

- the person responsible may be enjoined;
- court orders or judgments to prevent unfair business practices or to make available damages to any person harmed;
- a civil penalty not exceeding $2,500 for each violation;
- reasonable expenses for investigation and prosecution of the action; and
- violations of injunctions are subject to a civil penalty not exceeding $6,000 for each violation.

If prosecution is by a District Attorney, the civil penalties are paid to the county in which the judgement was entered. If prosecution is by the Attorney General, one-half of the civil penalties are paid to the county in which the judgement was entered and one-half to the State General Fund.

Under an unfair business practice action, the rationale for prosecuting parties responsible for overweight trucks is that a party who habitually exceeds the weight limits gains an unfair advantage over another party who makes a good faith effort to comply with the weight limits. The unfair advantage is more load per truck resulting in lower unit transportation operating costs resulting in increased profits. The overweight fines imposed by the Vehicle Code may not be a sufficient deterrent to the habitual violator, and that violator may view the Vehicle Code fines as a cost of doing business.

According to information provided by the Los Angeles County District Attorney's Office, between 1982 and 1987 there were six cases prosecuted under the unfair business practice statutes against trucking companies for overweight violations. The documentation on the habitual weight violations was provided by the CHP. In one case, a trucking company agreed to settle under the following conditions: a permanent injunction prohibiting overweight loads, the installation of on-board scales for the company's trucks, a $175,000 civil penalty, and investigation and prosecution expenses to the CHP and District Attorney's Office.

A pattern of habitually shipping or transporting overweight loads needs to be documented to identify the party or parties primarily responsible for the overweight loads. The following weighing records may be available or a court order may be obtained to review the records if reasonable cause can be shown:

- CHP records;
- Local enforcement agency records;
- Public weighmaster records (see the Appendix for CHP and District Attorney procedures); and/or
- Marine and rail terminal records.

Since the marine and rail terminal scales are not required to be certified by a public agency, there may be challenges in court to the accuracy of the scales. However, OSHA regulations require that any scale used to meet the requirements of 29 CFR Part 1917-Marine Terminals shall meet the accuracy standards of the state or local public authority in which the scale is located.

### 2. Minnesota's Relevant Evidence Law

The State of Minnesota enacted its "relevant evidence" legislation for enforcing truck weight limits in 1980. The "relevant evidence" law gives Minnesota law enforcement officers the legal right to review various types of private weighing records and to introduce these records in court without apprehending and weighing the vehicle on the road. Bills of lading, weight tickets, volume documents, and other appropriate documents may be used in determining, directly or indirectly, a vehicle's weight. These documents are admissible relevant evidence in a civil court action for the prosecution of a weight violation. The driver, shipper, truck owner, or lessee of equipment can each be assessed all or part of the fine depending on the degree of involvement of each party in causing the overweight.

### 3. Current CHP Enforcement Practices

The CHP weight enforcement policies, procedures, and practices are generally described in the CHP's Commercial Enforcement

Manual and the CHP's California Vehicle Size and Weight Enforcement Plan that is prepared to fulfill the FHWA requirements in 23 CFR Part 657-Certification of Size and Weight Enforcement. This section of the report discusses the CHP enforcement practices at the Ports of Long Beach, Los Angeles, and Oakland. Information was obtained through conversations with local CHP offices and CHP commercial enforcement officers in the field.

CHP weight enforcement in the vicinity of the ports is performed by Mobile Road Enforcement Units (MRE). These units consist of CHP commercial enforcement officers with specially equipped pickups, station wagons, or Class A patrol vehicles. Most units are equipped with portable scales which can be placed on the road surface or in pits. MREs also perform safety inspections of commercial vehicles. CHP policy states that officers assigned to MRE duties should spend approximately 50 percent of their time conducting critical item inspections (driver's qualifications and log, brakes, steering, frame, suspension, wheels and tires, drawbar, fifth wheel, and registration). For fiscal year 1989, there are 129 personnel year positions statewide assigned to perform MRE duties in the field.

The MRE's assigned to the ports are stationed in local CHP offices at Westminister (Port of Long Beach), Torrance (Port of Los Angeles), and Oakland (Port of Oakland). The Westminister office has three commercial officers and one federal officer who perform inspections. The Westminister commercial officers patrol the Port of Long Beach area as a regular course of business for their entire jurisdiction. They may work individually, in teams, or in strike forces with the Torrance office. A strike force involves a lane closure and a 100% coverage of all the commercial vehicles travelling on that particular road. A strike force is performed once every 3 to 6 months. When a suspected overweight truck is stopped, it is usually sent to nearby private scales for weighing. The CHP maintains accounts with private companies with scales. The cost to weigh a truck is $5 or $6 per truck.

The Torrance CHP office breaks up their jurisdiction into sections with one section designated as the Harbour Section covering the Port of Los Angeles. The Torrance office has four commercial officers and one federal officer. One commercial officer is assigned to the Harbour Section on a daily basis, but additional officers may be assigned to the Harbour Section depending on the nature of the enforcement activities. Private scales are used in a similar manner as used by the Westminister office.

The Oakland CHP office has three commercial officers and one federal officer. The Oakland commercial officers patrol the Port of Oakland area as a regular course of business for their entire jurisdiction. The enforcement practices are similar to the other

CHP offices in the use of commercial officers and private scales. All commercial officers select trucks as suspected overweights on the basis of experience using the amount of tire area on the road surface and the sound of the engine as indicators of overweights.

### 4. Existing Certified Public and Private Scales

Section 2802 of the California Vehicle Code authorizes any traffic officer to require a suspected overweight truck to be driven to the nearest scale provided the scale is within 5 miles of the point the truck was initially stopped by the officer. Section 2809 requires all scales used by the CHP to be annually certified as to accuracy.

Public weighmasters operate scales that may be used by any truck driver. The fee for weighing a truck is usually $5 or $6. A public weighmaster's license is obtained from the Department of Food and Agriculture. The annual license fee is $75 per company and $20 per scale operator per year. The scales must be certified as to accuracy. The training of the scale operator is the responsibility of the company. The Department of Food and Agriculture makes periodic checks of the weighing procedures with a test vehicle and ensures that the weighing certificates are being properly completed. The certification of the scales for accuracy is performed by the appropriate county's weights and measures unit. The Counties of Alameda (Port of Oakland) and Los Angeles (Ports of Long Beach and Los Angeles) charge $20 to certify a truck scale. The two exhibits that follow identify the existing certified public and private truck scales in the port complex no more than one mile from the nearest marine terminal in the port complex.

## C. Local

### 1. Local Authority

The highway weight limits defined in the California Vehicle Code and identified in Section II-A of this report apply to all public roads in California. However, various California Vehicle Code sections provide local governments with the authority to set higher and/or lower weight limits according to specified procedures and limits.

The Port of Oakland and the City of Oakland have established an overweight truck permit process for specified streets in the Port of Oakland's marine and rail terminal complex. The permits apply only to 40-foot containers. As described in Section II-B of this report, unused weight capacity is approximately 15,000 pounds for a 40-foot container if the federal bridge formula is complied with. The details of the permit specifications are summarized as follows:

- gross vehicle weight shall not exceed 95,000 pounds;
- triple axle chassis shall be used;

EXHIBIT 15

## CERTIFIED PUBLIC AND PRIVATE SCALES IN THE IMMEDIATE VICINITY OF THE PORTS OF LONG BEACH AND LOS ANGELES

| Name | Address | City | Zip |
|---|---|---|---|
| *Asbury Public Scale | 1150 N. Alameda | Wilmington | 90744 |
| Baker Commodities | Pier D Berth 30 | Long Beach | 90802 |
| Bulk Terminal | 960 Deforest Ave. | Long Beach | 90813 |
| *C. Brewer Terminals Inc. | 1395 Pier J Ave-Berth 242 | Long Beach | 90802 |
| California United Terminals | Pier B - Berth 12 | Long Beach | 90802 |
| Cargill | 400 Water St. | Wilmington | 90744 |
| Catalina Freight | Berth 184 | Wilmington | 90744 |
| Dow Chemical | 305 Henry Ford Ave. | Terminal Island, L.B. | 90802 |
| Falcon Disposal | 3031 E. "I" Street | Wilmington | 90744 |
| Golden West Terminals | 825 W. 12th St. | Long Beach | 90813 |
| G.A.T.X. | Port of L.A. Berth 70-71 | San Pedro | 90731 |
| Hanjin & Korean Shipping | Port of L.A. | San Pedro | 90731 |
| Hiuka American Corporation | 720 New Dock St. | Terminal Island, L.A. | 90731 |
| Hugo-Neu-Proler | 901 New Dock St. | Terminal Island, L.A. | 90731 |
| *L.A. Terminals | 560 Pier A | Wilmington | 90744 |
| *Loren Scale Co. | 249 N. Pico Avenue | Long Beach | 90802 |
| Matson Container | Berth 208 | Terminal Island, L.A. | 90731 |
| *Ocean Salt Co. | 1250 Panorama Dr.<br>Berth 209 | Long Beach | 90802 |

| Name | Address | City | Zip |
|---|---|---|---|
| Overseas Terminal | Berth 230 | Terminal Island, L.A. | 90731 |
| Pacific Coast Cement | 601 Pier 'D' | Long Beach | 90802 |
| Pacific Container Terminal | Pier J Berth 247 | Long Beach | 90802 |
| *Pacific Molasses | 395 W. Water Street | Wilmington | 90744 |
| *Pacific Scales Co. | 1368 W. Anaheim St. | Long Beach | 90813 |
| *Phillips Steel | 1368 W. Anaheim | Long Beach | 90813 |
| Riverside Cement | Berth 134 | Wilmington | 90744 |
| Sea Land | Pier G Berth 227 | Long Beach | 90802 |
| Sea-Land Service Inc. | 669 Panorama Drive | Long Beach | 90801 |
| Standard Fruit & Steamship | Pier A Berth 208 | Long Beach | 90802 |
| United Brands Co. | Neptune Ave.-Berth 147 | Wilmington | 90744 |
| Union Oil | 1660 W. Anaheim | Wilmington | 90744 |
| Ultramar Refining | 2402 E. Anaheim | Wilmington | 90744 |
| *Wilmington Liquid Bulk | 401 Canal Street | Wilmington | 90744 |
| Wilmington Salvage | 821 N. Sigsbee Ave. | Wilmington | 90744 |

*Public scales

Source: Weight & Measures, Agricultural Commissioner, County of Los Angeles, June 1, 1989, and State Department of Food and Agriculture

## EXHIBIT 16

## CERTIFIED PUBLIC AND PRIVATE SCALES IN THE IMMEDIATE VICINITY OF THE PORT OF OAKLAND

| Name | Address | City | Zip |
|---|---|---|---|
| Alta Bldg Material | 2857 Hannah | Oakland | 94608 |
| *Anchor Container Services Co. | 1301 3rd St. | Oakland | 94607 |
| CCY | 2505 Poplar St. | Oakland | 94607 |
| *Conagra-Inc | 2201 E 7th St. | Oakland | 94607 |
| Custom Alloy | 2730 Peralta | Oakland | 94607 |
| *Cypress Street Scale | 1401 3rd St. | Oakland | 94607 |
| D.C. Metal | 1401 3rd Street | Oakland | 94607 |
| *Gazda Moving Co, Inc | 200 Fallon Street | Oakland | 94607 |
| Globe Metals | 1820 10th Street | Oakland | 94607 |
| Independent Paper | 3300 Wood Street | Oakland | 94608 |
| *Industrial Turning Processors | 2730 Peralta St. | Oakland | 94607 |
| *J & O's Commercial Tire Center | 1107 5th Street | Oakland | 94607 |
| *K M C Trading Co. | 2505 Poplar Street | Oakland | 94607 |
| Lakeside Metals | 412 Madison | Oakland | 94607 |
| Lynn Im Export | 707 2nd Street | Oakland | 94607 |
| *National Recycling Corp. | 1312 Kirkham St. | Oakland | 94607 |
| *Phoenix Iron Works | 8th & Pine Street | Oakland | 94607 |
| Schnitzer Steel | Foot of Adeline | Oakland | 94607 |
| Trans-Bay Container | 707 Ferry Street | Oakland | 94607 |

* Public scales

Source: Dept. of Weights and Measures Alameda County, June 1989, and State Department of Food and Agriculture

- operations are permitted only on designated, ground level streets (no structures or bridges, See Exhibit 17);
- permit is issued to a truck tractor and is non-transferrable;
- safety inspections are required to be performed by the City of Oakland and CHP every 90 days on the truck tractor and special chassis;
- permitted trucks shall not operate between the hours of 7-9 a.m. and 4-6 p.m.; and
- permitted trucks are limited to 30 miles per hour.

After 2 1/2 years, six companies with 15 truck tractors and 53 triple-axle chassis have been issued permits. Approximately 250 40-foot containers per week are being moved under permits. To date, there have been no accidents involving permitted trucks.

The Port of San Francisco operates under the authority of the City and County of San Francisco, and the Department of Public Works administers the city's permit process for overweight trucks. Single trip or annual permits are issued depending on the type of load and number of loads proposed to be carried under the permit. Due to the number of loads involved, truck drayage companies hauling containers are usually issued annual permits. The permit covers only San Francisco streets, and a specific route is specified on each permit depending on the origins and destinations of the loads to be transported. The permits are issued on the basis of axle loads, but a maximum gross vehicle weight of 93,000 pounds under the permit also applies. On a city-wide basis, approximately 950 single and annual permits are issued. Generally, no other special provisions apply.

### 2. Current Local Enforcement Practices

The police departments for the Cities of Long Beach, Los Angeles, and Oakland assign one or two officers trained in commercial vehicle enforcement practices to their respective port areas. The Port of Oakland pays the City of Oakland for the salary of one commercial enforcement officer to administer the special provisions of Oakland's overweight permit process. In most other respects, local enforcement practices are similar to CHP practices.

## D. Enforcement and Technology

Weigh-in-motion (WIM) scales collect and record in a computer the following information without stopping the vehicle: time of weighing, vehicle classification, speed, overall length, distances between axles, individual axle loads, gross vehicle weight, and type of weight violation (bridge formula, single axle, tandem axles, and gross). WIM is not currently used for weight limit enforcement in the United States. It is primarily used as a screening device when used in conjunction with static scales and is an excellent tool for data collection.

EXHIBIT 17

## CITY OF OAKLAND/PORT OF OAKLAND DEDICATED STREETS REQUIRING SPECIAL OVERWEIGHT VEHICLE PERMITS

- Maritime Street between West Grand on-ramp and intersections at 7th Street
- 7th Street between Bay Street and the non-dedicated portion near the intersection of Ferry Street
- Middle Harbor Road between the Naval Supply Center entrance and Adeline overpass
- Third Street between Kirkham Street and Market Street
- Market Street between Third Street and intersection at Embarcadero
- Adeline Street between Third Street and Fifth Street, inclusive of those dedicated portions beside and beneath the Adeline ramp
- Fifth Street between Kirkham Street and Chestnut Street
- Ferro Street between Union Pacific Gate and American President Line Terminal entry drive
- American President Line Terminal entry drive
- Magnolia Street between First Street and Fifth Street
- Chestnut Street between 1st Street and 5th Street

Caltrans has installed 7 WIM systems on the State Highway System, 3 other systems are currently under construction, and 40 are in various stages of preliminary planning and design. A WIM system was constructed as part of the Truckee Inspection Facility for westbound traffic on I-80. Initially, about 15% of the vehicles were recorded as overweight. This figure has now dropped to 7%. Not only are these systems valuable in screening and identifying trucks for static weighing, in addition, as their presence becomes known to the trucking companies and drivers, they tend to act as a deterrent. A WIM system will be a part of all new scale facilities, and they will be installed at existing inspection facilities and platform scales as warranted.

California is a participant in a research and demonstration program on WIM, automatic vehicle identification (AVI), and automatic vehicle classification (AVC). The participants in the Heavy Vehicle Electronic License Plate (HELP) program include California and twelve other states, trucking industry representatives, and the Port Authority of New York and New Jersey. The research efforts under the HELP program are aimed at improving the quality, quantity, and cost of collecting data on the characteristics of trucks operating on the nation's highway system to obtain:

- greater understanding of roadway use;
- improved industry control of vehicles and their cargo; and
- improved administration of laws and regulations.

The Cargo Handling Cooperative Program was formed in 1983 by the Maritime Administration and three U.S. ocean carriers to identify productivity and quality improvements in container terminal operations. Research and demonstration efforts are being conducted on automatic equipment identification (AEI) systems. Radio frequency identification systems appear to hold the most promise of success under the typical operating conditions found at marine terminals. With a unique identifier for any piece of equipment (truck tractor, chassis, or container), various types of equipment data may be automatically extracted from a computer data base. For example, the tare weights for a truck tractor, chassis, or container could be easily obtained. Various types of shipping data for the cargo could be accessed. Maintenance schedules for the equipment could be checked. Locational systems to find a specific piece of equipment in storage yards are also being researched.

## IV. DISCUSSION OF ALTERNATIVE SOLUTIONS

### A. Introduction

The Task Force strongly recommended that potential solutions in addition to truck scale facilities should be identified and evaluated. The Task Force cited the efficient movement of cargo and the need to avoid artificial business advantages or disadvantages between different segments of the intermodal industry as the primary reasons other solutions should be explored. It may be possible that existing information sources and existing truck scales, public and private, may lend themselves to the formulation of workable solutions.

An even playing field needs to be maintained. For example, if one port, railroad, or terminal operator informs their customers that their containers will be weighed and that their loads must be legal as to highway weight limitations, then all players must do the same. Any proposed solution or enforcement action must address the competitiveness issue with respect to non-California ports on the Pacific Coast. Shippers of goods, depending on their specific transportation economics situation, may switch to a non-California port if the negative economic impacts of an enforcement action prove to be too great. California must carefully evaluate the options for enforcing truck weight limits to minimize any possible diversion of trade to other Pacific Coast ports. This suggests a need to address the issue at the federal level, but California may be in a position to influence any national efforts.

It is very difficult to address the overweight intermodal freight issue from the perspective of a single state since the issue is a national problem with international repercussions. There is only so much a single state can do without suffering from the negative economic consequences of its own actions. At the international level, foreign shipper responsibility can only be effectively addressed at the national level. A single state probably has a greater capability of addressing overweight shipments in export trade than in import trade.

The Task Force concluded that the findings and recommendations of this study need to be tied into similar efforts throughout the nation and at the federal level. Solutions that are unique to conditions in California will not be transferrable to the rest of the United States and this has implications for the competitiveness issue and the question of trying to maintain a level playing field.

### B. Alternatives

The following listing of possible actions to reduce the amount of overweight intermodal freight was developed from the Task Force meetings, various reports on the issue, and articles appearing in trade periodicals.

Weighing/Enforcement

- Construct scales on or near marine and rail terminals
- Use private weighmasters licensed by the California Department of Food and Agriculture
- Use private certified scales
- Use existing platform scales at marine and rail terminals
- Install weigh-in-motion (WIM) scales
- Install weighing instruments on loading cranes
- Establish regional truck inspection and weighing facilities for intermodal freight
- Require a weight limit compliance certificate
- Increase weight enforcement resources and efforts
- Institute a selective weight inspection process
- Increase enforcement through the use of California's unfair business practice statutes

Intermodal Industry Activities

- Expand on-dock rail facilities
- Maximum weight clause in ocean tariffs to include United States highway weight limitations
- Alter freight rate structure to eliminate or partially eliminate per container rates
- Modify Uniform Intermodal Interchange Agreement (UIIA) to prevent the tendering of overweight containers and trailers
- Develop educational program on United States highway weight limits
- Continue dialogue established through various intermodal industry groups and associations and make

use of industry-wide agreements and individual contracts to comply with weight limits

- Use the proper chassis for the particular load (chassis with sliders to adjust axle spacings and chassis with triple axles)

Legislative

- Local government establishes a permit process to allow overweights to use local streets and roads for short hauls near ports
- Adopt legislation assigning overweight liability to the parties most directly responsible
- For an overweight citation, adopt legislation that would allow the citation to be amended once the identity of the party or parties primarily responsible for the overweight had been determined

Intermodal shipments of exports and imports need to be addressed at different points in the intermodal transportation chain to fulfill the intent of United States highway weight limit laws (prevent pavement damage and reduce safety impacts). The import shipment needs to be controlled before it leaves the United States port for a public highway and the export shipment needs to be controlled as close as possible to its originating point (shipper's end) before it reaches a public highway. This points to the possibility of different solutions for exports and imports.

## C. DISCUSSION OF ALTERNATIVES

### 1. Weighing/Enforcement

**Construct scales**

Constructing scales on or near marine and rail terminals would require substantial construction and operating costs. A truck scale facility, excluding right of way, may cost from $2 to $5 million. The CHP would be the logical operator of any state constructed scales since they operate the Caltrans scales on the State Highway System.

**Private weighmaster scales**

Scales operated by private weighmasters licensed by the California Department of Food and Agriculture provide verification of cargo loads for business purposes. Their main purpose is not weight limit enforcement. Since these are certified scales, the CHP has authority to direct a truck to these scales for verification of a suspected overweight. The scale must be within 5 miles of the point the CHP initially stopped the truck.

### Private certified scales

Private certified scales are used by private businesses to measure out the amount of goods or materials ordered and to ensure compliance with the highway weight limits. The CHP has the authority to direct a truck to these scales for verification of a suspected overweight.

### Marine/rail terminal scales

Platform scales at marine and rail terminals are used for the proper loading of shipments on a ship or rail car. These are not usually certified. The California Vehicle Code requires that the scales used by the CHP are to be certified as to accuracy on an annual basis. Thus, the CHP may not direct a suspected overweight truck to these scales unless they have been certified.

### Weigh-in-motion scales

Weigh-in-motion (WIM) scales collect and record in a computer the following information without stopping the vehicle: time of weighing, vehicle classification, speed , overall length, distances between axles, individual axle loads, gross vehicle weight, and type of weight violation (bridge formula, single axle, tandem axles, and gross). WIM is not currently used for weight limit enforcement in the United States. It is primarily use as a screening device when used in conjunction with static scales and is an excellent tool for data collection.

### Loading crane weighing instruments

Various types of weighing instruments are available for installation on loading cranes, large fork lift type equipment for containers, and other lifting equipment. Their application to highway weight limit enforcement is questionable due to accuracy variations. A truck's gross weight would be calculated by adding the container's gross weight determined by the weighing instrument to the tare weights of the truck tractor and chassis.

### Regional weighing facilities

Regional truck inspection and weighing facilities would be exclusive facilities for trucks transporting intermodal shipments. It is envisioned that three or four facilities would be strategically located in a region containing a port with significant container movements. All export containers, whether entering the region by rail or truck, would have to obtain certification from these facilities as to legal weight. If an overweight container was encountered, it would have to be lightened. The certification would be needed to enter the marine terminal. Depending on the location of the regional facilities, significant additional transportation costs and delays would cause considerable opposition to this alternative. In addition, substantial construction and operating costs would be involved. These would be on approximately the same magnitude as a Caltrans facility ($2 to $5 million per facility for construction, plus right of way, plus operations).

### Compliance certificate

Another option envisions an actual weighing of the truck and container or piggyback trailer as early as possible in the intermodal transportation chain and the issuance of a weight limit compliance certificate. The weight certificate would be required as a condition of tendering the intermodal load to another party. Depending on the origins and destinations of the shipment, a truck movement in California over public highways may or may not be involved. If a truck movement is not involved, the enforcement of this option on that shipment is a waste of resources and an exception should be made. Any fines assessed for non-compliance should be assessed against the primary party responsible. In the case of an import where the shipper is found to be responsible, collecting the fine from the foreign shipper may prove to be impossible. If California were to go alone in implementing this option, there would likely be some diversion of trade to non-California ports and negative economic consequences. The 100% coverage envisioned would increase the operating costs of intermodal carriers and increase delays at terminals.

### Increased enforcement resources

Weight enforcement resources and efforts could be increased to improve the deterrent effect of citations and fines. The truck driver and/or truck company would still be the party initially cited. The issue of primary responsibility for the overweight would still exist, and, in fact, would increase in scope due to more citations being issued. To the extent that a truck driver or company is successful in passing on the responsibility for the citation and fine, there may be some degree of increased compliance with the highway weight limits by the parties primarily responsible for the overweight. The extent to which this would occur is dependent on the number of times a party is cited and the size of the fines. The overweight fines assessed by the California Vehicle Code, if not of sufficient magnitude, may be viewed as simply another cost of doing business.

### Selective weighing

For the selective weighing inspection process, a data base containing information on container size, container tare weight, cargo weight, and type of commodity would be needed to select the shipments with a reasonable probability of being overweight. This information, to varying degrees of accuracy, is available from bills of lading, export bookings, ship's manifests, equipment interchange agreements, and marine and rail terminal weighing records. These are private documents and access would have to be obtained by law enforcement agencies through voluntary agreements or legislation. Scale options include public scales operated by a public weighmaster and certified by the California Department of Food and Agriculture, private scales certified by a county, and portable scales such as those utilized by the CHP. The CHP and local enforcement agencies have the authority to direct a truck to a public or private certified scale if it is within 5 miles of where the truck was initially stopped.

A commodity density analysis could assist in selecting containers for weighing. The analysis uses information on the average maximum cargo load to comply with highway weight limits, the volume of the container, and the "as shipped" densities of the commodity in the container. The practical highway weight limits for cargo loads in 20 and 40-foot containers were defined in the demonstration weighing program performed by the Bi-State Harbor Carriers Conference and other participants in March 1988. It was concluded that the average cargo load limitations necessary to comply with the federal bridge formual were:

- 37,000 pounds of cargo in a 20-foot container on a 23-foot chassis;

- 38,000 pounds of cargo in a 20-foot container on a 27-foot chassis; and

- 44,000 pounds of cargo in a 40-foot container on a 40-foot chassis.

For the most common type of containers based in the United States, a 20 ft. x 8 ft. x 8.5 ft. dry van has a capacity of 1,160 cubic feet and a 40 ft. x 8 ft. x 8.5 ft. dry van has a capacity of 2,380 cubic feet. Dividing the average cargo load limitations by the volumetric capacity yields maximum commodity densities to prevent violations of the federal bridge formula when the container is fully loaded:

- 32 pounds per cubic foot in a 20-foot container on a 23-foot chassis;

- 33 pounds per cubic foot in a 20-foot container on a 27-foot chassis; and

- 18 pounds per cubic foot in a 40-foot container on a 40-foot chassis.

Typical "as shipped" commodity densities are available from various sources. Using information from the American Association of Railroads Commodity Attribute File and Density Study 9, Southern Motor Carriers Rate Conference, typical "as shipped" commodity densities are listed below:

| Commodity | Density (pounds/cubic foot) |
|---|---|
| Meat Products | 56 |
| Grainmeal By-products | 41 |
| Vegetables, Canned | 31 |
| Newspaper | 29 |
| Plastic Bags | 20 |
| Doors & Shutters, Wooden | 13 |
| Electrical Components | 10 |
| Furniture, House & Office | 4 |

When the "as shipped" densities are compared to the maximums calculated above, a basis for selective weighing is established. This type of analysis could also be used to determine which higher density commodities should be shipped on a weight basis to remove the economic incentive to ship overweight containers under a per container tariff.

### Unfair business practice

A civil court action with significant civil penalties may be initiated under California's Business and Professions Code Section 17200 which defines "unfair competition" to include "... unlawful, unfair or fraudulent business practice ..." For further details, see the discussion in Section III-B-1.

In the case of intermodal freight, the prosecution of an unfair business practice cause of action may involve various parties in the intermodal transportation chain. The objective is to reach the party or parties primarily responsible for the tendering of overweight loads. A considerable limitation to prosecuting unfair business practice cases is the limited number of attorneys and investigators assigned to this area of the law, usually organized under a consumer fraud unit in the District Attorney's Office.

## 2. Intermodal Industry Activities

## On-dock/in-port rail facilities

Due to competitive business pressures, the Ports of Long Beach, Los Angeles, and Oakland are implementing or planning to implement new or additional on-dock or in-port rail facilities. The Port of San Francisco has constructed an on-dock intermodal container transfer facility. These facilities are a natural solution for part of the problem of overweight containers. The facility may be located within a marine terminal, thus serving only that terminal, or in the port area and serving more than one marine terminal. If it's located within a marine terminal, a truck movement may still be involved; but since it occurs on private property, it is of no consequence with respect to public road weight limits. An in-port rail facility may still involve a truck movement over a public road, but for very short distances. Due to limitations on land availability, train noise impacts, traffic congestion impacts of at-grade railroad crossings, high construction costs, and the large volume of intermodal shipments, on-dock or in-port rail facilities will address only part of the problem. The intermodal shipment will still need to use a public highway for local pickup or delivery unless it is loaded or unloaded at a container freight station located at a port.

## Educational efforts

The International Trade Facilitation Council estimates that an international shipment may involve more than 40 separate documents with as many as 25 parties involved. Since the truck move represents a very small part of the total international shipment, it is reasonable to conclude that United States highway weight limits may not be common knowledge to the parties involved. This illustrates the need for information on weight limits at key points in the intermodal transportation chain. For example, in publications listing ocean carrier tariffs, a maximum weight clause could be included describing the United States highway weight limits. As another example, the Uniform Intermodal Interchange Agreement, effective July 1, 1988, now contains a clause stating that trucks hauling intermodal shipments shall not exceed United States weight limits. For the benefit of shippers, Hapag-Lloyd, a West German ocean carrier, has prepared a fact sheet on the federal bridge formula. Educational efforts are essential to a correct understanding of the United States highway weight limits and what they mean in terms of the amount of cargo weight that can be placed in a container.

Dialogue by various industry groups and associations within the intermodal industry is continuing. Industry-wide agreements and individual contracts are voluntary means to achieving compliance with highway weight limits. Educational efforts initiated by a specific company may be encouraged to be adopted on an industry-wide basis through various business associations. A summary listing of some of the most recent efforts is contained in Appendix B.

### Weight tariffs

Transportation tariffs assessed on a per container basis, as opposed to a weight basis, encourage the loading of a container to its volumetric capacity. The Federal Maritime Commission has been discussing the establishment of ocean tariffs on a weight basis for certain high density commodities with affected parties. Without governmental regulation, adherence to the tariffs based on weight is questionable due to the competitive business forces in a deregulated environment.

### Chassis equipment

Since the bridge formula weight limit criteria are defined in terms of truck axle loads in combination with axle spacings, using longer chassis or chassis with variable axle settings (sliders) may eliminate some of the bridge formula violations. Whether the violation can be eliminated depends on the amount of overweight poundage, the number of axles on the chassis, the range of the axle settings, and the overall length of the chassis. Most of the chassis in the intermodal industry are owned by ocean carriers and equipment lessors. These chassis owners are replacing, to a certain degree, their old, rigid chassis with chassis containing sliders. Special chassis range in cost from $10,000 to $15,000 per unit depending on whether they are equipped with sliders, whether their length is adjustable to accommodate different sizes of containers, and whether they have triple axles.

## 3. Legislative

### Permit process

Under the California Vehicle Code, local governments have the authority to establish a permit process to allow overweight trucks to use local streets and roads for truck intermodal movements near ports. This has been implemented at the Port of Oakland and the Port of San Francisco. If established with proper safeguards to prevent undue safety problems and pavement or bridge structural damage, the permit process is a tool that addresses a specific need. The permit process must be rigorously enforced to prevent abuses such as truck movements on road systems not falling under the jurisdiction of the agency that established the process.

### Assigning responsibility

Legislation has been introduced in California that would assign responsibility for an overweight truck to the party tendering the cargo load that caused the truck to be overweight. The initial assignment of responsibility could shift from one party to another in the intermodal transportation chain until the party who was responsible for the cargo load causing the overweight truck was reached. For imports, perhaps the consignee in the United States could exert some influence on the foreign shipper. One enforcement option is to have the overweight fine assessed against the cargo. The cargo would not move until the fine was paid and the load made legal as to highway weight limits. Another option in attempting to reach the responsible party is to adopt legislation that would allow the citation to be amended to add the responsible party as a codefendant. This legislative option would provide protection to the truck driver and/or truck company. But when the truck driver or truck company have knowledge of the overweight, they must bear some of the responsibility.

# V.CONCLUSIONS AND RECOMMENDATIONS

## A. Conclusions

### 1. Highway Weight Limits as the Weak Link

An intermodal container or piggyback trailer may meet the weight limitations for a ship, rail car, or crane, but an overweight problem may arise when it is placed on a truck and required to meet lighter truck axle load limitations.

### 2. Size of the Problem

Based on the FHWA analysis of the PIERS data base for federal bridge formula compliance, 34% of the container movements through United States ports are "potentially" overweight when they are transported by truck. Estimates of truck overweights in general range up to 20% of all truck movements. The FHWA analysis revealed that exports were 79% of the "potentially" overweight containers on the Pacific Coast.

### 3. Law Enforcement

Considering the number of truck movements through marine and rail terminals, the resources devoted to highway weight limit enforcement are very limited. Under statute, the CHP may only take vehicle weight enforcement action on public property and it may not allow an overweight vehicle to proceed.

### 4. The Intermodal Transportation Chain and Overweight Responsibility

The intermodal transportation chain is international in scope and involves many parties. This makes it difficult to assign the responsibility for an overweight intermodal shipment on the party primarily responsible. Overweight citations and fines, to some extent, are being passed on from the trucker to the steamship line to the United States shipper.

Without a consistently applied nationwide enforcement program, truck operators and ocean carriers must either transport what is tendered by the shippers or accept the loss of business under very competitive market conditions. Truck operators are the parties being cited for overweights, but they are not responsible for the loading of intermodal shipments. However, when truck operators have knowledge of the shipment being overweight, they must accept some of the responsibility for transporting it over a public highway.

### 5. Economic Considerations

Reloading an overweight shipment to reduce its weight may cost more than the carrier earns in transporting it. Decisions on overweights are being made throughout the intermodal transportation chain on the basis of economics.

## 6. Existing Scales and the Availability Of Weighing Information

The types of scales in the vicinity of ports are certified public weighmaster, certified private, and non-certified scales at marine terminals for weighing exports. Scales are being installed at some rail terminals. Law enforcement agencies may obtain access to the weight records maintained at the various types of scales provided current legal requirements are met. For the prosecution of an unfair business practice case, a District Attorney may obtain access to the public weighmaster records if certain procedures are followed (See Appendices C and D). If reasonable cause can be established, a court order may be issued to access private weighing records.

Other documents containing commodity and weight information include a ship's manifest, bills of lading, export bookings, and equipment interchange agreements. These are private records. The weight information may be an estimated weight.

## 7. Study Direction and Issues

The Task Force strongly recommended that potential solutions in addition to scale facilities should be identified and evaluated to take into account the efficient movement of cargo. The majority of terminals don't have the space for new facilities. There has to be financial recovery for new weighing facilities. Weigh-in-motion technology may serve as one means of reducing the cost of additional weighing facilities.

An even playing field needs to be maintained. If one railroad, port, or terminal operator informs their customers that their containers will be weighed and that their loads must be legal as to highway loads, then all players must do the same.

Any proposed solution or enforcement action must address the competitiveness issue with respect to other ports on the Pacific Coast. Solutions that are unique to conditions in California will not be transferrable to the rest of the United States, and this has implications for the competitiveness issue. California must carefully evaluate the options to minimize the diversion of trade to other Pacific Coast ports.

The issue of overweight intermodal shipments is a national problem. The findings and recommendations of this study need to be tied into similar efforts throughout the nation and at the federal level.

## B. Evaluation and Recommendations

### 1. General Strategy

Since decisions on overweights are being made throughout the intermodal transportation chain on the basis of economics, actions to increase compliance with public road weight limits should remove economic incentives to transport overweight shipments or should establish economic disincentives of sufficient magnitude that are focused on the parties responsible for creating overweight shipments. If sufficient economic disincentives are applied at the proper points in the intermodal transportation chain, corrective actions may possibly be reflected back up the chain to the responsible party for originating the overweight shipment. This will tend towards a self-policing process as long as the focused enforcement and economic disincentives continue to be applied. The options must be carefully evaluated to minimize any possible diversion of trade to other Pacific Coast ports.

### 2. Industry Activities

Intermodal industry activities that should produce direct benefits in terms of reducing the number of overweight containers include educational, regulatory, and facility improvement activities. These activities should be supported and regulatory agencies encouraged to implement appropriate changes.

These activities include educating all intermodal parties on public road weight limits and how the number of overweights may be reduced through the use of appropriate chassis equipment. A comprehensive educational and outreach effort could be coordinated through various intermodal industry associations and governmental agencies.

As petitioned by the Transpacific Westbound Rate Agreement (association of ten ocean carriers in US/Asian trade), American Trucking Associations (ATA), ATA's Intermodal Council, and the South Europe/U.S.A. Freight Conference (association of 15 ocean carriers in US/European trade), the Federal Maritime Commission should be encouraged to remove economic incentives for creating overweight containers by removing tariffs on a per container basis for the higher density commodities. A tariff based on weight should be substituted. See Appendix E for the tariff rule as proposed by the South Europe/U.S.A. Freight Conference, ATA, and the ATA Intermodal Council.

Ports are implementing or developing plans for the construction of on-dock or in-port rail facilities which will reduce the distance of or partially eliminate the need for the drayage of containers on public roads. To facilitate the movement of freight by rail from the rail terminals located in the central

Los Angeles area to the Ports of Long Beach and Los Angeles, rail and street improvements have been identified along the Alameda Street corridor. The implementation of these improvements will be directed under a joint exercise of powers agreement between the City of Long Beach and the City of Los Angeles and will be titled the Consolidated Transportation Corridor Joint Powers Authority. The authority plans to establish an advisory board consisting of representatives of the Santa Fe, Southern Pacific, and Union Pacific Railroads for the implementation of the proposed improvements.

These industry activities are relatively neutral in terms of the competiveness issue and maintaining a level playing field. The petition to the Federal Maritime Commission is an example of the need to involve the federal government in the resolution of the issue of overweight intermodal shipments.

### 3. Law Enforcement

The objective of any law enforcement option for overweight shipments should be to assess economic disincentives on the parties responsible for creating or controlling the overweight. Two primary issues are involved: the first is identifying the overweight shipments for prosecution; the second is identifying the responsible parties. The critical criteria for evaluating law enforcement options are to minimize the resources needed, minimize disruptions to intermodal operations, and minimize negative economic consequences to California.

To maximize the benefits from law enforcement efforts, the habitual violator creating or knowingly transporting the heavier or larger number of overweight shipments should be targeted for prosecution. This will require a data base of sufficient size to identify a pattern of violations by responsible parties. A sense of the magnitude involved may be established by considering that the Ports of Long Beach, Los Angeles, and Oakland handled 1.9 million loaded containers in 1988. The prosecution of the habitual violator should be pursued under a civil penalty since civil court remedies require that the parties having primary control be held responsible.

Due to the volume of intermodal shipments at the major California ports, enforcement actions should be concentrated on the port areas. In developing enforcement options, consideration needs to be given to current intermodal operational practices to minimize any delays resulting from enforcement actions. Exports are weighed for gross vehicle weight at marine terminal gates whereas imports are not usually weighed. The export is weighed to properly stow it on-board a ship. Exports are coming from diverse points to a central location, whereas imports are leaving a central location for diverse points. These operational characteristics point to possible different law enforcement approaches for exports as opposed to imports.

The law enforcement options that were identified in the study process evolved around how best to develop a data base for the identification of habitual violators. The data base options identified were:

Exports
- Increased mobile road enforcement
- Access to private weight records generated at marine terminals

Imports
- Increased mobile road enforcement
- Selective weighing based on information contained in a ship's manifest or bills of lading

## Increased mobile road enforcement (exports and imports)

The mobile road enforcement option is applicable to both exports and imports, and it would be implemented by the CHP. It would consist of using portable weigh-in-motion (WIM) equipment as a screening device. This would increase the probability of being cited for an overweight without having to weigh every truck at a static scale. The WIM screening will increase the number of truck weights observed in comparison to a weighing process involving only static scales since the static weighing process requires a truck to be stopped and is considerably more time consuming. Using the portable WIM information, the indicated overweight trucks would be apprehended and directed to a public static scale. Another option is to statically weigh the trucks using portable static scales setup at the WIM location. An increased data base of overweight citations resulting from this weighing process would be analyzed for the identification of habitual violators.

Operating procedures for the portable WIM/static weighing process would vary depending on the conditions encountered. Possible operating procedures include:

- For a port with limited access routes, surround the port area with law enforcement officers and portable WIM equipment;
- Direct trucks through a portable WIM location or locations;
- Target a particular marine terminal or groups of terminals that geographically constitute a logical grouping with limited access routes to limit the opportunity for avoidance by truckers; and/or
- Conduct enforcement activities just prior to the time a ship is scheduled to depart or when import containers are being trucked out of the marine terminal.

To significantly increase the data base of violations using the portable WIM/static weighing process would require that law enforcement agencies assign officers to this activity on a full time basis. Currently, the CHP officers assigned to the port areas are responsible for equipment and driver inspections as well as weight enforcement. It is CHP policy that these officers should spend approximately 50 percent of their time conducting critical item inspections (equipment and driver items). The minimum number of staff/officers and necessary equipment for one portable WIM/static weighing team would include:

- One staff person to operate and monitor the portable WIM equipment. Estimated yearly salary including benefits is $45,000.
- One commercial enforcement officer to apprehend and direct a portable WIM identified overweight truck to a static scale. Estimated yearly salary including benefits is $54,000.
- Portable WIM equipment. Estimated cost is $7,000 for the weighpad with an estimated life of 1 to 2 years and $23,000 for the computer with an estimated life of 5 years or more.
- Small van for transporting portable WIM equipment. Estimated cost is $15,000 with an estimated life of 4 to 5 years.
- Small truck for CHP officer and equipped with portable static scales. Estimated cost is $30,000 with an estimated life of 4 to 5 years.
- Annual estimated maintenance and miscellaneous costs of $9,000.
- For one portable WIM team, the total annual operating costs are $108,000 with the initial capital costs totaling $75,000.

Under current statutes and CHP policy, the public static scale must be certified as to accuracy and the officer must observe the weighing and the issuance of the weighing certificate in order for an overweight citation to be issued to the truck driver. Considering travel from the portable WIM site to the static scales, possible queue at the public static scales, weighing and issuance of a weight certificate, issuance of an overweight citation, and travel back to the portable WIM location, it is estimated that one commercial enforcement officer could issue about one citation every 20 minutes under the best conditions. More trucks could be processed if portable static scales were setup at the WIM location. The number of officers that should be assigned to a team would vary according to the portable WIM results. The trucks producing the higher portable WIM readings should be apprehended and statically weighed.

A data base of the citations generated by the portable WIM/static scale weighing process would be analyzed to identify habitual violators. The CHP's Management Information System of Terminal Evaluation Records (MISTER) contains information on citations. The information in MISTER is carrier specific and includes date, time, officer identification, violation, drivers license, CHP area office, and truck tractor identification (Interstate Commerce Commission or California Public Utilities Commission). The MISTER file does not maintain information on the results of the court proceedings. The details of developing an appropriate data base to provide as much information as possible to efficiently prosecute habitual violators in civil court would need to be developed if the portable WIM/static weighing option is selected for implementation. One objective of the data base would be to minimize the investigative effort required to pursue the prosecution of a habitual violator.

It is CHP policy not to permit the cited overweight truck to proceed until the overload has been removed, adjusted, or an overweight permit obtained from the appropriate authority. For state highways, Caltrans has adopted the policy that an intermodal container is a divisible load, and a permit shall not be issued for an overweight container to be transported over state highways. The overweight load must be removed or adjusted. Various local authorities allow the transportation of overweight containers under permit.

The CHP policy of not allowing an overweight truck to proceed raises the issue of the impact of the portable WIM/static scale weighing process on terminal operations. If the overweight violation is of such a magnitude that part of the load needs to be removed, this additional handling of the container's load will incur additional costs in terms of labor, equipment needs, and time delays. For imports, the U. S. Customs Service would be required to document the reloading of the container to properly track the collection of the appropriate import duties. The incidence of these reloading costs should fall on the party responsible for creating or controlling the overweight container, but this is difficult at times, especially for imports. The options include directing the container to a bonded warehouse for the shipper to handle, directing an import container back to the marine terminal, and allowing an export container to complete its trip to the marine terminal since it has almost reached that destination. Marine terminals may or may not have the necessary equipment to reload a container. The services of a container freight station may need to be employed. If shippers begin to incur significant costs because of reloading requirements, there may be an adverse reaction and possible diversion of trade if enforcement efforts are not applied consistently across the entire Pacific Coast. This points to the necessity of federal solutions.

### Access to private weight records generated at marine terminals (exports only)

This option would require legislation authorizing the access by the CHP to the export weight records generated at marine terminals. Legislation would also require that the scales at marine terminals be certified as to accuracy. By having the scales certified, challenges in court to the accuracy of the data would be reduced. The cost to certify a scale in Alameda and Los Angeles Counties is $20.

Under the authority of the proposed legislation, the CHP would establish a systematic review process of the private weight records at marine terminals. The information that would be accessed includes any carriers identified, shipper identification, weight information, and date. This could be accomplished through the use of computers and by accessing only the data fields required. The export weighings are recorded on an equipment interchange report (EIR). The EIR typically includes information on the carrier, shipper/consignee, type of commodity, container size, and the scale weight. Knowing the tare weights for the truck tractor, chassis, and container, the cargo load weight is calculated from the scale weight.

To implement this option, the CHP would have to assign officers on a full time basis to access the marine terminal weight records, perform the analysis, pursue any additional investigative efforts required to establish that an overweight container was actually transported over public roads to initially identify a responsible party (defendant), and to work with attorneys in the prosecution of a habitual violator. Since the only weighing information recorded is gross vehicle weight, only violations of the 80,000 pound gross weight limit could be determined directly from the export weighings. Information on axle loads and axle spacings would be needed to determine violations of axle load limits and of the bridge formula. To maximize effectiveness, prosecutions should target parties involved in a high number of violations with large overweights.

The State of Minnesota has established procedures to implement its relevant evidence law that permits access to private weight and volume records by state law enforcement officers. They monitor all businesses that buy and sell goods on the basis of weight or volume. Minnesota uses eleven uniformed state troopers to review private records on a statewide basis and to conduct any further investigations needed to bring a case before its civil courts. The Minnesota experience could be used to develop the detailed procedures for accessing the weight records at marine terminals in California.

Considering the volume of container movements through California ports, one CHP officer could be assigned to monitor the export weight records at the marine terminals at each of the following locations: 1) the Ports of Oakland and San Francisco, 2) the Port of Long Beach, and 3) the Port of Los Angeles. The details of the CHP operating procedures for access to private business records will need to be defined on the basis of the legislation proposed for the possible implementation of this option.

### Selective weighing (imports only)

In contrast to exports, import containers are not usually weighed at marine terminals in California. However, a ship's manifest, an inventory of the containers on-board, is prepared from the bills of lading and lists the size of the containers, gross container weight, commodity, and origin and destination ports. The selective weighing option for imports would require legislation authorizing access by the CHP to import documents containing weight information. Since the weight information may be an estimated weight, it is proposed that a selective weighing process be established by using the information on the import documents as a basis of selecting the containers to be weighed.

The selective weighing process is defined as follows:

Step 1. Per the legislation authorizing access to private documents containing weight information, the CHP establishes a systematic review process of the ship's manifest and bills of lading. The private documents must be reviewed prior to loading the containers on trucks to allow for a timely selection of the trucks to be weighed.

Knowing the stated container gross weight and typical tare weights for the truck tractor and chassis, a gross weight can be estimated for each container carrying vehicle. The estimated gross weights exceeding the 80,000 pound vehicle gross weight limit or the lower limit determined by the application of the bridge formula will be selected for weighing.

If the scales to be utilized are capable of determining axle loads, the federal bridge formula weight limits can also be checked for compliance. As previously described, an actual loading and weighing test resulted in cargo load limits of 38,000 pounds in a 20-foot container and 44,000 pounds in a 40-foot container for compliance with the federal bridge formula. These limits are "averages" and must be used only for purposes of selecting the trucks to be weighed.

Step 2. The CHP officer informs the marine terminal operator and the steamship line of the containers to be weighed. For those containers that will be travelling over a public road, the details (location, date, time) of the weighing operation are established.

Per Vehicle Code Section 2802, a traffic officer having reason to believe a vehicle is overweight may require a vehicle to be driven to the nearest scale facility within 5 miles. Per Vehicle Code Section 2809, all scales used by the CHP to enforce the weight limits must be certified as to accuracy at least once in each calendar year by the Bureau of Weights and Measures of the Department of Food and Agriculture or by a county sealer of weights and measures. The public weighmaster scales are identified in Section III-B-4 of this report.

Step 3. The terminal operator gives the truck driver the location of the scales to report to. This information transaction is documented to protect the terminal operator.

Step 4. The truck is weighed. If the truck is overweight, CHP policy would require the overload to be removed, adjusted, or an overweight permit obtained from the appropriate authority. The options and impacts of correcting the overload that were discussed under the portable WIM/static weighing process are applicable under the import selective weighing option.

Step 5. The lightened container is reweighed for verification of compliance.

Step 6. In the event that 1) the truck driver is not informed, 2) the truck driver is informed but does not appear with the truck at the scale, or 3) the truck does not return for the reweighing, the party whose action or inaction caused these results is subject to prosecution and a fine under the proposed legislation implementing the selective weighing option.

Step 7. A data base is to be created containing the information relative to the initial selection of containers (origin, destination, shipper, steamship line, terminal operator, truck operator, container size, container tare weight, cargo load, container gross weight, and commodity) and the results of the weighing, reweighing, type of overweight, and amount of overweight. The data base will be used to improve the basis of selection for the selective weighing program and to identify parties who attempted to avoid being weighed.

Considering the volume of container movements through California ports, two CHP officers could be assigned to review the import documents and coordinate the selective weighing process at each of the following locations: 1) the Ports of Oakland and San

Francisco, 2) the Port of Long Beach, and 3) the Port of Los Angeles. The details of the CHP operating procedures for access to private business records will need to be defined on the basis of the legislation proposed for the implementation of this option. No overweight citations would be issued, but citations would be issued for non-compliance with the CHP officer's directions for the weighing of the selected trucks.

**PIERS data base**

The Journal of Commerce PIERS master file consisting of data recorded from import manifests and export bills of lading for freight moving through U. S. ports may be used to identify specific shippers involved with higher density freight. This information could be used in focusing any educational efforts or enforcement activities. Due to the high volume of containers moving through California ports, there is an approximate average time lag of three weeks between the time the container is moved through the port and the time the container data is entered into the PIERS data base. The data entered into the PIERS data base includes:

- name of U. S. importer
- name of U. S. exporter
- city and state of U. S. consignee for imports and U. S. shipper for exports
- country of dispatch
- country of destination
- U. S. port
- foreign port
- steamship line
- name of vessel
- date of shipment
- commodity description
- name of the overseas shipper
- point of origin
- point of destination
- unit of measure for shipment
- quantity of units
- pounds of cargo
- container size
- container quantity
- container volume

For data on all freight moving through California ports, a preliminary cost estimate to access the PIERS data base is $2,000 per month.

Using the PIERS data base, shippers transporting containers with high weight cargo loads could be identified. Information on highway vehicle weight limits could be sent to these shippers. The information on containers with high weight cargo loads could also be used to select for review by the CHP specific weight records at marine terminals of trucks hauling the identified export containers.

Options for prosecution

One of the ways to increase compliance with public road weight limits is to change behavior by establishing economic disincentives of sufficient magnitude that are focused on the parties creating or controlling overweight shipments. The portable WIM/static scale weighing process, access to private weight records for exports, and import selective weighing process all aim to develop a sufficient data base to identify habitual violators. Having identified these parties, legal action will be pursued that levies substantial fines against guilty parties. The legal action pursued on the basis of the selective weighing process is based on the avoidance of the process rather than on the basis of an overweight load.

- **Vehicle Code**

Overweight citations resulting from mobile road enforcement are prosecuted under the Vehicle Code. There is authority in the Vehicle Code to pursue legal action against any other person who directs the loading, maintenance, or operation of the vehicle. Thus, individual citations could be used to bring legal action against the parties having primary control of the overweight, but the resulting economic disincentives may not be of sufficient magnitude to change behavior. The amount of investigative and legal resources required may discourage pursuing legal action against responsible parties where only a small number of citations are involved.

- **Unfair business practice**

As discussed in Section III-B-1, an unfair business practice cause of action may be brought against the habitual violator. It is plausible to conclude that avoidance of the selective weighing practice constitutes an unfair business practice, but this has never been tested in the courts. Overweight citations issued by various law enforcement agencies and weight records maintained by public weighmasters have been used as evidence in court to document the existence of an unfair business practice. The remedies available under an unfair business practice cause of action include:

- the person responsible may be enjoined;
- court orders or judgments to prevent unfair business practices or to make available damages to any person harmed;
- a civil penalty not exceeding $2,500 for each violation;

- reasonable expenses for investigation and prosecution of the action; and
- violations of injunctions are subject to a civil penalty not exceeding $6,000 for each violation.

- **New civil penalty**

Another option is to legislate a new civil penalty in conjunction with the proposed legislation authorizing access to private business weight records. This is the approach taken by Minnesota in its relevant evidence law. Minnesota law also includes a definition for shipper liability. The Minnesota cases are prosecuted by the Attorney General's Office. The prosecuting attorney makes a prima facie case on the basis of the private weight records against the most readily apparent party, usually the truck owner or carrier. The defendant is then responsible for going forward with the evidence for any defenses available. This includes impleading other parties that may have had control of the overweight shipments. The various defendants plead their defenses, and it is up to the court to assign responsibility for the overweights and assess the appropriate fines. The Minnesota relevant evidence law has been upheld in Minnesota courts against legal challenges based on unreasonable searches and seizures and equal protection issues.

## Evaluation

The critical criteria for evaluating law enforcement options are to minimize the resources needed, maximize effectiveness, minimize disruptions to intermodal operations, and minimize negative economic consequences to California.

- **Legislative requirements**

The portable WIM/static weighing option does not require implementing legislation. Legislation will be required to access private weight records to implement the export option using the weight records generated at the marine terminals and to use the import documents for the selective weighing option. Through the legislative process, the legal details of making a private weight record available to the CHP will need to be defined and the legal issues evaluated. The legislative process should be used to explore the legal issues from the perspectives of the various parties affected by the proposed legislation.

Overweight intermodal shipments are just a part of the overall issue of overweight trucks. The public road weight limits are the "weak link" in the intermodal chain which has resulted in a high proportion of trucked intermodal shipments being overweight. The international scope of intermodalism and the numerous parties involved in the intermodal chain has help create a situation where responsibility for an overweight shipment is being passed from one party to another. Do the special transportation characteristics of the intermodal industry justify the options that involve legislation authorizing the access to private business records? Is there an issue of equal protection under the law involved here? Why should only the intermodal industry be singled out to have its business records reviewed by the CHP? Under California law, does the right to privacy protect businesses from a records search? These are some of the legal issues that will need to be evaluated through the legislative process.

- **Resource requirements and cost**

Depending on the coverage desired, the portable WIM/static weighing option will have highly variable resource requirements since it is labor intensive. For comparison purposes, it is initially assumed that one full time portable WIM/static weighing team would be assigned to each of the following locations:

1) Ports of Oakland and San Francisco
2) Port of Long Beach, and
3) Port of Los Angeles.

This is a total of three teams with two members per team at a total annual operating cost of $324,000. The initial capital costs for the three teams is estimated at a total of $225,000.

To access private weight records for exports, one CHP officer could be assigned to monitor the weight records at the marine terminals at each of the following locations:

1) The Ports of Oakland and San Francisco
2) The Port of Long Beach, and
3) The Port of Los Angeles.

The estimated annual operating costs for three CHP officers is $177,000. The initial capital costs for three vehicles is $45,000.

To access private weight records for imports and to coordinate the selective weighing process, it is assumed that a minimum of two CHP officers would be required at each of the following locations:

1) Ports of Oakland and San Francisco
2) Port of Long Beach, and
3) Port of Los Angeles.

The estimated annual operating costs for six CHP officers is $354,000. The initial capital costs for six vehicles is $90,000.

- **Effectiveness**

For the portable WIM/static weighing option, the following ranges of annual citation rates are based on a single team citation rate of one every twenty minutes, six hours of weighing per day are assumed due to setup and takedown time of the WIM equipment and lane closures, every truck statically weighed is assumed to be overweight, and it is assumed that overall truck volumes at the WIM locations are sufficiently large and steady to produce one WIM indicated overweight truck every twenty minutes. Therefore, the numbers below represent the maximum annual citation rates at a truck weighing rate of one truck every twenty minutes.

| Number of Teams * | Annual Maximum Citation Rate | Annual Operating Cost | Initial Capital Cost |
|---|---|---|---|
| 3 teams | 13,500 citations | $324,000 | $225,000 |
| 6 teams | 27,000 citations | $648,000 | $450,000 |
| 9 teams | 40,500 citations | $972,000 | $675,000 |

* Allocated equally to 1) Ports of Oakland and San Francisco 2) Port of Long Beach, and 3) Port of Los Angeles.

The Federal Highway Administration's (FHWA) analysis of the PIERS data base resulted in an overall potential overweight violation rate of 34% of the containers moving through United States ports. To roughly put the above number of citations into perspective, applying 34% to the 1.9 million loaded containers moving through the Ports of Long Beach, Los Angeles, and Oakland in 1988 results in 646,000 potentially overweight containers. It is cautioned that this calculation is made only for comparison purposes. The potential violation rate at the individual ports was not determined by FHWA.

The access to private weight records for exports will make all gross vehicle weighings made at the marine terminal gates available to the CHP. If the weight records have been computerized, information sorts could be made for those weighings exceeding 80,000 pounds gross vehicle weight. If enough information could be obtained on axle loads and axle spacings, or if the available information is adequate to calculate axle loads using a computer program, it may be possible to determine violations of the axle weight limits and the bridge formula limits. To maximize the effectiveness of the ensuing prosecutions, the responsible parties with the larger number of the heavier overweights could be targeted for prosecution. In 1987, ten Minnesota State Patrol Civil Weight Investigators checked approximately 610,000 private weight records.

For the selective weighing of imports, the access to import documents will provide the information needed to target the heavier containers for selective weighing. Since no overweight citations will be issued, the CHP officer will not be required to observe the weighing at the designated public static scales, but periodic observations may be prudent. The instructions for the weighings should designate more than one public scale to avoid queues at any one scale, but a queue may be encountered due to normal business activity. The CHP officer could have the truck drivers deliver the weighing certificate to the officer at a centrally designated location to speed up the collection of the weighing results from the use of multiple public scales. If reloading and reweighing a container is involved, the rate of processing the trucks will be reduced. If a truck driver does not report as directed, a citation will be issued against the responsible party, and this will require investigative effort. The investigative work should be conducted on a non-weighing day. If no significant queues are encountered and the instructions (date, time, and place) for the weighings are properly issued and complied with, it may be possible to obtain weighing results at the rate of one every ten minutes per assigned officer. This is a daily rate of 48 weighings per day per officer.

For the Pacific Coast, the FHWA analysis of the PIERS data base revealed that 79% of all potentially overweight containers were export containers. The comprehensive coverage provided by the access to export weighing records would address the major part of the overweight container issue.

Exhibit 18 is a summary of the costs of various levels of resources allocated to the law enforcement options and an estimate of the effectiveness of those options. The effectiveness measure is annual truck weights reviewed instead of overweight citations since no reasonable basis could be established to make an estimate of the number of citations that would be issued.

- **Reloading of overweight containers**

It is CHP policy not to permit the truck to proceed until the overload has been removed, adjusted, or an overweight permit obtained from the appropriate authority. If removing the overload is the only available solution, the consequences under the three options under discussion will vary. For the access to export weight records, the review occurs after the container has been moved through the marine terminal and loaded onto a ship. There would be no impact on intermodal operations.

Under the portable WIM/static weighing option, the truck carrier has assumed responsibility for the container and its cargo, and the truck carrier may encounter difficulties in obtaining reloading assistance from other intermodal parties. Where should this responsibility lie? Should the shipper, ocean carrier, rail terminal, or marine terminal come to the assistance of the truck carrier? Who should initially incur the costs of reloading the overload? Who should bear the final responsibility for the reloading costs?

# EXHIBIT 18
# SUMMARY OF LAW ENFORCEMENT OPTIONS

| OPTION | STAFF ASSIGNED[1] | ANNUAL OPERATING COST[2] | INITIAL CAPITAL COST | FIRST YEAR TOTAL STARTUP COST | ANNUAL TRUCK WEIGHTS REVIEWED | FIRST YEAR COST PER REVIEW |
|---|---|---|---|---|---|---|
| WIM/STATIC WEIGHING (EXPORTS & IMPORTS) | 6(3 TEAMS)<br>12(6 TEAMS)<br>18(9 TEAMS) | $324,000<br>$648,000<br>$972,000 | $225,000<br>$450,000<br>$675,000 | $ 549,000<br>$1,098,000<br>$1,647,000 | 90,000[3]<br>180,000[3]<br>270,000[3] | $6.1<br>$6.1<br>$6.1 |
| PRIVATE WEIGHT RECORDS (EXPORTS) | 3<br>6 | $177,000<br>$354,000 | $ 45,000<br>$ 90,000 | $ 222,000<br>$ 444,000 | 300,000[4]<br>600,000[4] | $0.7<br>$0.7 |
| SELECTIVE WEIGHING (IMPORTS) | 6(3 TEAMS)<br>12(6 TEAMS) | $354,000<br>$708,000 | $ 90,000<br>$180,000 | $ 444,000<br>$ 888,000 | 150,000[4]<br>300,000[4] | $3.0<br>$3.0 |

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[1] Allocated equally to (1) Ports of Oakland and San Francisco; (2) Port of Long Beach, and (3) Port of Log Angeles.

[2] Includes salaries, benefits, and vehicle maintenance. The weighing costs under the WIM/static weighing and selective weighing options are not included, and they would vary according to the number of trucks selected to be weighed. The cost to weigh a truck at a public scale is $5 or the CHP could use its portable static scales.

[3] Assumed an average of 20 loaded containers per hour per WIM location. Six hours per day of weighing are assumed due to setup and takedown time of the WIM equipment and lane closures.

[4] Based on an adjusted State of Minnesota rate.

Under the portable WIM/static weighing option, exports and imports will be weighed. There is little practical benefit from a pavement damage perspective to reload an export container since it is practically at its destination. The practical benefit stems from any change in behavior that may result from assigning the costs of reloading or transporting an overweight container to the responsible party. For imports, the costs of reloading may be difficult to collect from a foreign shipper if the shipper was the responsible party.

For the import selective weighing option, the CHP officer has control of the situation starting with the directions to the ocean carrier and marine terminal being issued prior to a container being placed on a truck. The CHP officer, ocean carrier, marine terminal, and truck carrier are all parties to the import selective weighing process, and it is the responsibility of the private parties to jointly decide how to deal with an overweight container. If none of the private parties wants to take responsibility for the reloading of an overweight container, another possible alternative is for the CHP officer to direct the container to a bonded warehouse for the foreign shipper to resolve.

Any reloading required will have an impact on intermodal operations. The containers are scheduled to be loaded on railroad cars and ships at particular times and the reloading may cause delays in delivery schedules. Perishables present special problems and additional costs to maintain refrigeration. There may be possible further delays for imports stemming from the required involvement of the U. S. Customs Service for the purpose of tracking import duties.

- **Shipper impacts and economic consequences**

The shipper's concerns regarding the performance of the intermodal industry are that the numerous parties involved may have negative impacts on service parameters and impede timely deliveries. If there are significant operational delays and reloading costs involved under any of the enforcement options, the shipper may seek to use non-California ports where the shipper perceives this to be economically advantageous.

For the portable WIM/static weighing option, the amount of resources devoted to this labor intensive option will determine whether significant costs or operational delays will be incurred. The access to weight records for exports may lead to resistance by shippers to use intermodal transportation due to the availability of private business records to the CHP. The selective weighing of imports would also access private business records and a similar concern would be perceived by shippers.

Under all three options, especially if California goes it alone, there exists the possibility of the diversion of trade to non-California ports. This points to the need for federal solutions.

- **Options for prosecution**

The citations issued as a result of the portable WIM/static weighing activities would be prosecuted under the Vehicle Code. Consideration could be given to increasing the fine schedule under Vehicle Code prosecutions.

Export overweights identified by means of access to weight records would be prosecuted in civil court. A fine schedule should be written into the authorizing legislation. The civil penalty should be set at a level to deter the future shipment of overweights and to compensate for the cost of the pavement damage caused by the overweights. In a civil court action, the amount of the fine assessed against a party would be commensurate with the degree of responsibility that a party had in creating the overload.

The selective weighing of imports is more of a preventive weighing measure. A fine schedule would need to be established for parties avoiding the weighings.

The amount of resources needed to conduct additional investigative work leading to a prosecution will vary according to the type and amount of information made readily available to an officer. Under the portable WIM/static weighing option, the officer would collect information from the driver, to the extent available to the driver, on a single container. Under the access to weight records for exports, the officer has access to the following information for all export containers moving through a marine terminal: carriers; shipper/consignee; type of commodity; container size; scale gross vehicle weight; tare weights for the truck tractor, chassis, and container; and a calculated cargo load. There is some question of whether the shipper information is consistently recorded at the marine terminal gate. It is very problematical whether a truck driver would have all of this information readily available. Efforts to obtain this information from the driver will reduce the production rate for the weighing of trucks.

All of the citations resulting from any or all of these options would be placed in a data base for the identification of the habitual violator and possible prosecution under an unfair business practice cause of action. The adjudication of overweight violations is accomplished through an administrative, rather than court, process in some states, and this option should also be given consideration. Consideration should be given to assigning an attorney from the Attorney General's Office to prosecute cases stemming from access to weight records for exports and to increase the number of prosecutions for an unfair business practice cause of action.

- **Other issues**

There may be a problem in obtaining properly trained labor to operate the scales at marine terminals to the accuracy required for prosecution since there are many personnel changes at marine terminals. Under current procedures established by the Department of Food and Agriculture for the licensing of public weighmasters, the scales are required to be certified as to accuracy. There are no certification requirements for the scale operator. Periodic checks as to the accuracy of the weighings are made with a test vehicle. The training of the scale operator is the responsibility of the scale owner. The certification of the scale operator at marine terminals is not being proposed, only the scales are proposed to be certified.

Transportation contracts have a confidentiality clause and its requirements will have to be addressed. However, conscious decisions are made in negotiations between shippers and carriers, and evidence of these decisions would assist in assigning primary responsibility for an overweight container.

The review of the marine terminal records may create a burdensome audit procedure with the creation of an accompanying bureaucracy. Minnesota's experience should be drawn upon to minimize this concern.

- **Funding options**

Currently, fines under the Vehicle Code for overweight vehicles are collected by local governments. Though local government would oppose the loss of this revenue, one option is to amend California law in order to allocate the fines for overweight enforcement activities.

Some of the resources currently allocated to the construction and operation of State scale facilities could be redirected towards funding increased efforts in mobile road enforcement at the ports. This is basically a question of State priorities.

Revenues from the proposed civil penalty under the access to private weight records for exports could be directed to fund overweight law enforcement activities. If the Attorney General's Office prosecutes a successful case involving an unfair business practice, existing law allows the recovery of reasonable expenses for investigation and prosecution. In addition, one-half of the civil penalties are paid to the State's General Fund. These civil penalties could be directed to fund overweight law enforcement activities.

Assuming that Senate Constitutional Amendment Number 1 is approved by the voters at the June 5, 1990, direct primary election, a portion of the revenues from the increased taxes on gasoline and truck weight fees could be allocated through the state budget process for increased overweight law enforcement activities.

## Law enforcement recommendations

The consensus reached by the AB 4672 Task Force is that the primary options to be implemented should be those that authorize the access to and use of intermodal industry private weight records. These options are estimated to be more cost effective than mobile street enforcement and constructing scale facilities, and they should produce less disruptions and delays for intermodal operations. However, varying combinations of the private weight records search and mobile street enforcement could be fashioned to meet different operation characteristics at the various marine and rail terminals. These law enforcement options must be fashioned within the context of federal government efforts in order to maintain a level playing field with other states with respect to the competitiveness issue.

Specifically, it is recommended that:

1. The California Legislature enact legislation authorizing the access by the California Highway Patrol (CHP) to any weighing records of commercial vehicles transporting intermodal containers and piggyback trailers maintained by marine and rail terminals and that a civil penalty be defined for overweight intermodal shipments discovered by means of these records.

2. The California Legislature enact legislation authorizing the access by the CHP to import documents containing weight information on intermodal containers and piggyback trailers. This would include, but not limited to, a ship's manifest and bills of lading.

3. The authorizing legislation be written to include shipper's responsibility in overweight intermodal shipments by authorizing the CHP to cite the shipper for an overweight violation identified through a records search.

4. The California Legislature enact legislation authorizing any other action required by the CHP to fully implement the export records and import selective weighing alternatives as described in this report.

5. The CHP's budget be increased to implement the export records and import selective weighing alternatives as described in this report.

6. The CHP develop a computer data base of overweight citations with the capability of identifying habitual violators, including shippers, involved in overweight intermodal shipments.

7. Discussions be initiated by CHP and Caltrans staff with the Attorney General's Office to explore the possibility of the Attorney General's Office assisting in the prosecution of cases arising out of the implementation of the recommended alternatives and the prosecution of habitual violators under California's unfair business practice statutes.

8. The CHP contract with the Journal of Commerce for the Port Import/Export Reporting Service (PIERS) to aid in focusing its efforts for the export records enforcement alternative.

9. The California Legislature enact legislation giving a truck driver or carrier the opportunity to have a truck weighed prior to being subject to enforcement action when scale facilities are reasonably available.

10. The intermodal industry reach agreement on the responsibility for complying with the CHP's requirement that an overload must be removed if it cannot be adjusted or an overweight permit obtained from the appropriate authority.

11. The timing for the CHP implementation of the recommended law enforcement alternatives be evaluated in light of current or planned activities at the federal level to minimize any economic consequences to California from the diversion of trade to other Pacific Coast ports.

## C. Issues

### 1. Competition between Pacific Coast Ports

The Pacific Coast ports are in strong competition for import and export trade. With transportation improvements such as large capacity container ships, load center ports, and double stack container trains, the transportation economics and logistics are such that export and import shippers may have a choice of ports.

Under the recommended enforcement practices, the shipper may be assessed the new civil penalty for shipping overweights or may be prosecuted for an unfair business practice if the shipper had primary control of the loading of the shipment. A party who is a non-California resident is subject to the jurisdiction of California courts if that party conducts business in California. A party conducting business in California must register with the California Secretary of State and that party may be reached by the courts through the Secretary of State. If the transportation economics are about the same for a California port as compared to a non-California port for a particular shipper, the shipper may decide to use the non-California port in view of the new enforcement practices in California. To what extent this will occur cannot be predicted with any degree of certainty.

To minimize the competitiveness issue, some type of action at the federal level would seem appropriate. Under the Code of Federal Regulations (23 CFR Part 657, Certification of Size and Weight Enforcement), FHWA annually certifies the adequacy of plans for vehicle size and weight enforcement programs submitted by the states. Through the annual certification process, FHWA may target certain enforcement issues for resolution. Thus, the nationwide issue of overweight intermodal shipments may be addressed through this existing process. If FHWA finds a state's plan in noncompliance, the federal-aid highway funds apportioned to the state for the next fiscal year shall be reduced by 10 percent.

### 2. Use of Private Documents

Procedures will need to be developed to ensure that the private documents are protected and are used only for weight enforcement purposes. The intermodal industry is beginning to implement parts of an electronic data interchange system. The procedures developed will need to take these developments into account.

### 3. Resources and Priorities

The recommended law enforcement practices were developed to maximize the use of existing public and private information sources and truck scales. Additional law enforcement agency staff will be required to review the available data sources and direct the selective weighing activities. With the increasing use of computer generated data, the review and monitoring activities will be streamlined.

The FHWA analysis of the PIERS data base revealed that 79% of the potentially overweight containers on the Pacific Coast were exports, as opposed to imports. Thus, the initial emphasis in implementing the enforcement practices should be on the process developed for the exports.

### 4. Evaluation of Enforcement Practices

AB 4672 (Katz, 1988) requires Caltrans to submit annual reports describing its progress in developing the intermodal weight determination program, and its recommendations for the future of the program. To the extent that the recommendations contained in this report to the Legislature are implemented, they will be evaluated in cooperation with the parties involved. New factors, events, or developments affecting the overall issue of overweight intermodal freight will be incorporated. If the evaluation identifies the need for additional truck scales to properly implement the recommendations, the progress reports to the Legislature will provide the specific information on truck scale needs.

This first report to the Legislature did not extensively explore law enforcement options for rail terminals and piggyback trailers. However, the recommended legislation authorizing access to private weight records includes rail terminals. With this additional option available, Caltrans will explore options at rail terminals in more detail in the 1990 report to the Legislature. However, the portable WIM/static weighing alternative could be implemented at rail terminals provided that resources are allocated to the CHP for its implementation. It is recommended that the AB 4672 Task Force continue to meet to address rail terminals in more detail and to review the measures being taken to implement the recommendations contained in this report.

# APPENDIX

## Assembly Bill No. 4672

## CHAPTER 865

An act to add Article 1.5 (commencing with Section 35580) to Chapter 5 of Division 15 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 12, 1988. Filed with Secretary of State September 13, 1988.]

### LEGISLATIVE COUNSEL'S DIGEST

AB 4672, Katz. Vehicles: weight limitations: intermodal freight.

Existing law prohibits vehicles from traveling on highways in excess of specified weight limitations under the Vehicle Code, and imposes specified fines for violations of those weight limitations.

This bill would declare certain legislative findings regarding overweight vehicles on California's highways, and would require the Department of Transportation, in cooperation with representatives of specified business and government entities and labor organizations, to develop a plan for implementing facilities, as specified, for weighing intermodal container trailers, as defined, prior to their entry onto highways which are subject to weight limitations. The bill would require the plan to include financing options for required intermodal weighing facilities. The bill would also authorize the department to enter into agreements with local authorities or private entities to provide for exemption from weight restrictions for short distance movement to intermodal weighing facilities.

The bill would require the department to submit the plan to the Legislature, not later than August 1, 1989, and to thereafter report annually to the Legislature, as specified, describing its progress in developing the intermodal weight determination program.

*The people of the State of California do enact as follows:*

SECTION 1. Article 1.5 (commencing with Section 35580) is added to Chapter 5 of Division 15 of the Vehicle Code, to read:

### Article 1.5. Intermodal Weight Determination Program

35580. (a) The Legislature finds and declares that a substantial number of container trailers using California highways exceed weight limitations authorized for California highways. Intermodal container trailers are containers which have been unloaded from ships or trains and placed on truck chassis, or are piggyback trailers unloaded from trains, for subsequent transport upon the highways. Container trailers are usually loaded by shippers in other states or foreign countries where gross and axle weight restrictions imposed by this code are of no concern to the loader. These loading practices often result in overweight vehicles traveling on California highways, which contributes to highway deterioration.

(b) The Legislature further finds and declares that the continued growth of intermodal transportation within the United States and the Pacific Rim makes it important for California to initiate a program to allow intermodal freight to be weighed at major terminal locations prior to operation on the highways, to ensure that these vehicles are within the established weight limits. The Legislature finds that the imposition of heavy fines and assessments is one means of reducing the number of overweight vehicles on the highways. A more effective, and preferable, alternative is to assure that intermodal container trailers are properly loaded at the outset by the party responsible for loading goods into the container trailer, so that vehicles meet weight requirements prior to their operation on the highways.

35581. (a) The Department of Transportation, in cooperation with the Department of California Highway Patrol, shall develop a plan for implementing or identifying new or existing scale facilities at major intermodal terminals which may serve as intermodal weighing facilities for weighing commercial vehicles which transport intermodal freight, prior to their entry onto any highway which is not specifically exempted from weight limitations by a local authority. The plan shall be developed in cooperation with a task force consisting of representatives of ports, local government entities, shippers, labor organizations, and the trucking, steamship, and railroad industries. The plan shall include consideration of options for financing the construction of required intermodal weighing facilities. The plan shall be submitted to the Legislature not later than August 1, 1989.

(b) The Department of Transportation may enter into agreements with local authorities or private entities to provide for exemption from weight restrictions for short distance movement to an intermodal weighing facility.

(c) The Department of Transportation shall submit an annual report not later than August 1, 1990, and August 1 each year thereafter, describing its progress in developing the intermodal weight determination program, and its recommendations for the future of the program.

## APPENDIX B

## NATIONAL ACTIVITIES RELATING TO OVERWEIGHT CONTAINERS

The issue of overweight intermodal containers is receiving much attention in the transportation community. A listing of these activities includes:

- At the November 2, 1988 meeting of the Intermodal Transportation Association, FHWA Administrator Robert Farris stated that FHWA will try to give the intermodal industry reasonable and adequate time to come up with workable solutions to the overweight container issue. A set of scales at every port of entry was identified as a possible enforcement action.

- The American Trucking Association (ATA) has formed an Intermodal Council to address intermodal issues including overweight shipments.

- The Containerization and Intermodal Institute will be forming a subcommittee on container supply, demand and control. This will include sizes and weights.

- The National Motor Carrier Advisory Committee, which meets under the auspices of FHWA, has adopted three resolutions on overweight containers. These are:

  1. Establish a system to enable motor carriers to determine a container's weight, weight distribution, and contents.

  2. Shippers should be responsible for the cost of making overweight containers legal or responsible for the cost of penalties.

  3. A hotline should be created for reporting which shippers are habitually overloading containers.

  The Committee is also investigating ways to make shippers more accountable for actions that they may take which direct, require, or cause a motor carrier driver to violate any federal or state law or regulation.

- In 1988, the American Trucking Association suggested legislation requiring that every container be weighed before leaving the terminal or port. An overweight container would be made legal by changing axle configurations or by reloading the container. ATA has adopted "principles of fairness" to try to achieve voluntary agreement on overweight containers.

- FHWA Administrator Robert Farris was requested to enlarge the Transportation Research Board's ongoing study of vehicle and weight regulations to include overweight marine containers. The request was made by the:

  - National Association of Stevedores
  - American Association of Port Authorities
  - American President Companies
  - Evergreen International Corporation
  - Institute of International Container Lessors
  - Maersk Container Service Company, Inc.
  - National Industrial Transportation League
  - National Maritime Safety Association
  - Sea Containers America Inc.
  - United Shipowners of America

  The study was not expanded, but the U.S. D.O.T.'s Office of the Secretary, the Federal Railroad Administration, the Federal Highway Administration, the Federal Maritime Administration, and the U.S. Coast Guard have formed an informal group to study the issue.

- For purposes of traffic congestion relief and improving air quality, Los Angeles Mayor Tom Bradley has proposed that the Los Angeles Harbor Commission act to work with terminal operators to operate the port with two full shifts; to establish inland container drop-off facilities; and to identify the elements, financing and relationships necessary to implement a plan for a special truck route and an on-dock rail container facility.

- FHWA has stated (August 30, 1984) that if a state determines that a load or vehicle is in the category of nondivisible, then the state may issue a special permit, consistent with pavement and bridge integrity, without further federal involvement. Based on the needs of international commerce and possible tax implications for bonded cargos, FHWA has no difficulty in construing containerized cargo involved in international trade as a nondivisible load.

California's position is that containerized cargo is reducible in all respects and must be transported at legal dimensions and weight.

- A code of ethics for shippers and carriers has been developed by the National Industrial Transportation League and the Interstate Truckload Carriers Conference. It includes the following provisions with respect to load limits: shippers and receivers are to ensure vehicles are loaded within legal load limits; carriers and their drivers should not overload equipment. The code of ethics was adopted in 1989.

- The Intermodal Marketing Association has established the Uniform Storage and Detention Code whose signatories include 5 railroads, 30 shippers agents, and 35 trucking lines (October 1988). Among other items, the Code prescribes a means of communications and outlines each party's responsibilities.

- The Cargo Handling Cooperative Program was formed in 1983 by the Maritime Administration and three U.S. flag carriers to identify productivity and quality improvements in container terminal operations.

- The Uniform Intermodal Interchange Agreement (UIIA) attempts to achieve uniformity in the agreements between trucking companies and ocean carriers. The UIIA covers the responsibilities of owners and users of equipment, insurance, and operating rules and procedures for resolving disputes. For the loading of intermodal equipment, the UIIA states, "--- vehicles hauling loaded or unloaded intermodal equipment, shall not exceed U.S. Federal, State, Local or Municipal highway gross and axle weight limitations as applicable. The gross weight of loaded intermodal containers and trailers shall be indicated on the equipment interchange receipt and/or bill of lading. User may restrict size and weight of any equipment to meet clearance and highway requirements for movement over a particular route."

- The Federal Maritime Commission (FMC) has declared the container handling rules of the International Longshoremen's Association (ILA) contracts illegal under maritime statutes. If a container carries cargo from more than one shipper, the contracts would have required that only union members were to load/unload containers going to or from points within a 50-mile radius of East and Gulf Coast ports. On August 9, 1988, the U.S. Court of Appeals for the District of

Columbia upheld the FMC decision. The U.S. Supreme Court refused to review the decision by the U.S. Court of Appeals. This court decision may affect other similar labor contracts in the United States.

- The California Intermodal Coordinating Committee has been formed by representatives of the trucking industry, steamship lines, labor, ports and railroads to address various intermodal issues including overweight containers.

- The American Association of State Highway and Transportation Officials has established a Task Force on Ocean Containers to address the problems in highway transport caused by ocean-going containerized cargo shipments.

- The International Maritime Council, comprised primarily of shippers, has been established to promote dialogue with carriers on areas of mutual concern. The carrier associate members have raised the issue of overweight containers. The Council is a subdivision of the National Industrial Transportation League.

- The Intermodal Council of American Trucking Associations is considering a proposal for federal legislation that would declare unlawful, without prior court approval, the unilateral termination of equipment interchange agreements between ocean carriers, railroads, and truck carriers (June 1989).

- The American Trucking Association (ATA) is forming an Overweight Task Force to build a policy consensus on overweight containers and to attempt to influence and educate domestic and foreign shippers on U. S. public road weight limit laws. The issue of whether a container is a divisible load or not needs to be addressed on a consistent basis. The issue of overweight containers needs to be brought to the attention of Congress, or it could be addressed by FHWA policy action. The Overweight Task Force will be working with regional and state trucking associations (June 1989).

- State legislation introduced in 1989.

AB1683 (Clute) will require, upon the request of the driver, any person or business which has scales capable of axle weighings to weigh any load transported for that person or business before the vehicle leaves the loading facility.

SB587 (Doolittle) would make it unlawful for any person to provide to a highway carrier, pursuant to a contract of carriage, a written or oral bailment collateral thereto, or an equipment interchange agreement, any vehicle which is in an unsafe condition, not lawfully registered, not equipped as required by the Vehicle Code, or which exceeds the size, weight, and load limits stated in the Vehicle Code.

These bills are subject to change as they progress through the legislative process.

# APPENDIX C

## California Code of Regulations

### Article 9. Director's Approval of Inspection of Weighmaster Records

**4480. Application.**

These regulations shall apply to requests made to the Department of Food and Agriculture by a district attorney or district attorney's designated agent for inspection of weighmaster weight certificates or related documents pursuant to Vehicle Code Section 35557(a).

NOTE: Authority cited: Section 12027, Business and Professions Code; and Section 35557, Vehicle Code. Reference: Section 35557, Vehicle Code.

HISTORY:

1. New Article 9 (Sections 4480–4483) filed 10-23-85; effective thirtieth day thereafter (Register 85, No. 43).

**4481. Definition of Designated Agent.**

As used in these regulations, a designated agent of the district attorney is an individual within the district attorney's office and designated by the district attorney and authorized to make requests for inspection of weighmaster weight certificates or other related documents. Such designation shall be made in writing to the Director of the Department of Food and Agriculture by the district attorney.

NOTE: Authority cited: Section 12027, Business and Professions Code; and Section 35557, Vehicle Code. Reference: Section 35557, Vehicle Code.

**4482. Information Required by the Director.**

Any district attorney or designated agent of the district attorney who shall request inspection of any weighmaster weight certificates or related documents through the Department of Food and Agriculture shall certify that:

(a) He/she is the district attorney or district attorney's designated agent.

(b) He/she possesses a citation or copy of a citation issued for gross vehicle overweight, which has been referred by an Area Commander of the California Highway Patrol along with their reasons for believing that there may be an act of unlawful business practice, and requests the right to review records pertaining to trucks operated by the named company in the possession of specified weighmasters.

(c) He/she has served a copy of the request on an official of the named company, or is declining to do so for reasons specifically stated.

(d) He/she will reveal and discuss the findings from the review of these records with the named company prior to initiating any civil action against the company which is based in whole or in part on these records.

NOTE: Authority cited: Section 12027, Business and Professions Code; and Section 35557, Vehicle Code. Reference: Section 35557, Vehicle Code.

**4483. Approval of Request.**

If the Director of the Department of Food and Agriculture finds that the above conditions have been met, he/she shall issue a letter to the district attorney authorizing the district attorney or employees of the district attorney to inspect the records of those weighmasters to determine the number and extent of violations of Division 15, Chapter 5, Article 1 of the California Vehicle Code that may exist, related to the named company, covering a period of 30 days prior to and 30 days subsequent to the issuance of the identified citation.

NOTE: Authority cited: Section 12027, Business and Professions Code; and Section 35557, Vehicle Code. Reference: Section 35557, Vehicle Code.

**4484. Denial of Request.**

If the Director of the Department of Food and Agriculture finds that any of the above conditions have not been met, he/she shall issue a letter to the district attorney informing the district attorney that a letter authorizing inspection of weighmaster weight certificates or related documents has been denied, as well as the specific finding or findings upon which the denial was based.

NOTE: Authority cited: Section 12027, Business and Professions Code; and Section 35557, Vehicle Code. Reference: Section 35557, Vehicle Code.

**4485. Applicability—District Attorney.**

Nothing in these regulations shall be deemed to apply to any request by any district attorney or district attorney employee to obtain weighmaster weight certificates or related documents for purposes other than prosecuting a civil or criminal violation arising out of Division 15, Chapter 5, Article 1 of the California Vehicle Code.

NOTE: Authority cited: Section 12027, Business and Professions Code; and Section 35557, Vehicle Code. Reference: Section 35557, Vehicle Code.

**4486. Applicability—Other Law Enforcement Agencies.**

Nothing in these regulations shall be deemed to apply to or limit the rights of any law enforcement agency other than any district attorney's office to obtain such weighmaster weight certificates or related documents for any law enforcement purpose other than prosecuting a civil or criminal violation arising out of Division 15, Chapter 5, Article 1 of the California Vehicle Code.

NOTE: Authority cited: Section 12027, Business and Professions Code; and Section 35557, Vehicle Code. Reference: Section 35557, Vehicle Code.

APPENDIX D
California Highway Patrol
Commercial Enforcement Manual

## CHAPTER 12

## WEIGHMASTER RECORDS

1. BACKGROUND.

a. California Administrative Code (CAC) Title 4 Chapter 9 contains the regulations of the Department of Food and Agriculture concerning weighmaster records.

b. Title 4 CAC Section 4482 outlines the steps a District Attorney must take in order to request inspection of weighmaster certificates in conjunction with an investigation into unfair business practices involving vehicle gross weight law violations. To initiate civil action against a motor carrier for an unfair business practice involving repeated violations of the weight laws, a District Attorney must certify that:

(1) He/she possesses a citation or a copy of a citation issued for gross vehicle overweight.

(2) The citation has been referred by an Area Commander of the California Highway Patrol for review as an unfair business practice pursuant to Business and Professions Code Section 17200.

(3) He/she has justification for believing that there is an act of unfair business practice and requests the right to review records pertaining to trucks operated by the named company in the possession of specified weighmasters.

(4) He/she has served a copy of the request on an official of the named company.

(5) He/she will reveal and discuss the findings from the review of these records with the named company prior to initiating any civil action against the company which is based in whole or in part on these records.

c. The Director of Food and Agriculture will review the certification. Upon a determination that the conditions have been met, the Director will authorize the District Attorney to inspect the weighmaster records concerning the named company for thirty days prior and thirty days subsequent to the issuance of the identified citation.

2. PROCEDURE.

a. When an Officer becomes aware that a motor carrier may be engaged in an unfair business practice by continuously violating the weight laws, the following procedure will apply:

(1) The Officer will submit, to the Commander, a memorandum outlining the unfair business practice. All citations, documents and statements supporting the allegation should be included with the memorandum.

(2) The Commander will review the evidence, insuring that the violations constitute an unfair business practice as described in Section 17200 of the Business and Professions Code.

(3) The Commander may then refer the evidence to the District Attorney for review. The District Attorney may request inspection of a weighmaster's records for possible civil action against the violating motor carrier.

3. POLICY.

a. Such action should be taken only in cases where the pattern of violations of the carrier is flagrant and clearly shows an absence of innocent error, or

b. Where normal enforcement actions have not been an effective deterrent to weight law violations by the carrier.

## APPENDIX E

South Europe/U.S.A. Freight Conference
American Trucking Associations (ATA)
ATA Intermodal Council

### Proposed Tariff Rule

1) Shipper shall not tender, and Carrier may refuse to accept, containers stuffed by shipper with a cargo weight in excess of 17,300 Kilos (38,000 lbs.) per 20 foot container, 20,400 Kilos (45,000 lbs.) per 40 foot container, 16,300 Kilos (36,000 lbs.) per 20 foot R., 18,200 Kilos (40,000 lbs.) per 35 foot R. and 19,000 Kilos (42,000 lbs.) per 40 foot R.

Any expenses involved with refusal of such containers (including but not limited to demurrage, detention, storage, handling, inland transportation, or unloading of containers) will be for the account of the shipper. Any such expenses shall be paid by the shipper before release of the bill of lading or before return of the container to the shipper.

Where such container is to be unpacked by the Carrier or consignee within the confines of the port at a terminal of direct discharge the Carrier may accept the container even if the gross weight of the contents exceeds that listed above as long as the gross weight does not exceed the maximum payload for which the container is rated under the applicable safety convention.

2) Notwithstanding the maximum weights set forth above, it is the responsibility of the shipper to insure that any container tendered by it to a Carrier for transportation under the scope of this Tariff complies with all laws and regulations of each country in which it will transit (including local, State and Federal laws and regulations in the United States) with regards to road weight limitations, including any law or regulation which provides for a lower weight limitation than set forth above.

3) (a) If a container exceeding the maximum weights set forth above has been loaded aboard a Carrier's vessel, such container may be discharged to the consignee at any port and Carrier shall not transport or arrange to transport such container to any inland destination. Prior to discharge for inland transportation, the consignee must disclose the container weight to the inland carrier providing such transportation.

(b) Alternatively, the Carrier at its option and at shipper's expense and responsibility, may take the following steps:

(i) Cargo will be removed from the container in order to reduce the weight to an allowable amount and make the container ready for lawful road transportation. To the extent necessary, cargo shall be unstuffed, segregated, restuffed, etc.;

(ii) The cargo so removed will be forwarded to consignee as a separate freight collect shipment from the point of removal to point of final destination;

(iii) The rates to be applied for the transportation of any such cargo will be those published in applicable tariffs or at commercially reasonable rates and in the case of U.S. inland transport in tariffs on file with the ICC by the U.S. inland carrier which is engaged to transport the cargo.

Under either alternative (a) or (b), excess cargo shall be assessed a rate of $7.25 cwt.

4) (a) In the case of containers supplied by shipper, consignee or cargo owner or stowed or packed by either of them or on their behalf, shipper, consignee and cargo owner shall be jointly and severally liable and shall indemnify and hold harmless Carrier, its agents and any participating motor carriers from any loss, damage or penalty and for the cost of defending, including reasonable attorneys' fees, claims, suits or assessments for:

(i) Personal injuries, death, or damage to or loss of property resulting from failure of shipper, consignee or cargo owner to comply with any applicable laws, regulations or ordinances (including without limitation over-the-road weight limitations) or to comply with this Tariff rule.

(ii) Any fine, penalty or other sanction imposed upon Carrier, its agents or participating motor carriers for violation of any applicable laws, regulations and ordinances (including without limitation over-the-road weight limitations) in connection with any transportation service provided under this Tariff resulting from failure of shipper, consignee or cargo owner to comply with such laws, regulations and ordinances. Carrier, its agent or participating motor carriers shall have no duty to resist, dispute, or otherwise oppose the levy of such fine, penalty or other sanction and shall not have any liability to shipper, consignee or cargo owner for failure to do so.

5) The rights and remedies provided for in this Tariff rule are exclusive of any other rights and remedies which otherwise might be available to the Carrier, its agents, or participating motor carriers, including those under any applicable law or bill of lading.

6) The Carrier shall refuse to release a container to a consignee until all liabilities, fines and penalties have been satisfied by the consignee or Carrier has been reimbursed for payment of same or the consignee has provided a written undertaking to accept responsibility for such liabilities, fines and penalties.

6) The weight limits set forth in this rule shall supersede any different rating method shown in the applicable tariff.

# APPENDIX F

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# ROAD DAMAGE AND SAFETY EFFECTS OF OVERWEIGHT TRUCKS CARRYING INTERMODAL CONTAINERS

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THURSDAY, JUNE 28, 1990

House of Representatives,
Subcommittee on Investigations and Oversight,
Committee on Public Works and Transportation,
*Washington, DC.*

The subcommittee met, pursuant to other business, at 4:30 p.m., in room 2167, Rayburn House Office Building, Hon. Glenn M. Anderson (chairman of the subcommittee) presiding.

Mr. Anderson. The meeting of the Subcommittee on Investigation and Oversight will come to order.

This will be the second day of the Subcommittee's examination of the use of intermodal containers which, when heavily loaded and mounted on truck chassis, pose serious road damage and safety problems with their movements.

Yesterday we learned some disturbing news from the Department of Transportation witnesses—that there is no quantitative estimate of the damage caused by overweight vehicles in general, which could shed some light on the size of the subset represented by container-carrying overweight trucks. In addition, there are no plans to update the PIERS—the Port Import/Export Reporting Service—study; which, although criticized by some, is the best national estimate of potential overweight container movements available to date.

Our first panel consists of officials representing the American Association of Port Authorities. From the Maryland Port Administration, we have Mr. Anthony A. Chiarello, Deputy Executive Director; Joseph Birgeles, Manager for Marine Affairs will testify for the Port Authority of New York and New Jersey; also testifying are Ms. Caroline Peterson, Washington Representative for the Port of Long Beach, California; Mr. John Cushing, Intermodal Marketing Manager for the Port of Los Angeles; and Mr. Gerald L. Pope, Director of Trade Relations for the Port of Oakland.

We have all five of you there. Would you please stand and raise your right hand?

[Witnesses sworn.]

Mr. Anderson. You may be seated. Mr. Chiarello, you may begin.

## TESTIMONY OF ANTHONY A. CHIARELLO, DEPUTY EXECUTIVE DIRECTOR, MARYLAND PORT AUTHORITY; JOSEPH BIRGELES, MANAGER FOR MARINE AFFAIRS, PORT AUTHORITY OF NEW YORK AND NEW JERSEY; CAROLINE PETERSON, WASHINGTON REPRESENTATIVE FOR THE PORT OF LONG BEACH, CA; JOHN CUSHING, INTERMODAL MARKETING MANAGER FOR THE PORT OF LOS ANGELES; AND GERALD L. POPE, DIRECTOR OF TRADE RELATIONS FOR THE PORT OF OAKLAND

Mr. CHIARELLO. Thank you, Mr. Chairman.

Good Afternoon. My name is Tony Chiarello. I am the Deputy Executive Director of the Maryland Port Administration and the Chairman of the American Association of Port Authorities' Operations Committee. My testimony today is given on behalf of AAPA.

Mr. Chairman, the public port industry commends you for your commitment to reducing the number of overweight trucks traveling America's highways. The issue raises difficult questions about public safety and infrastructure investment as well as the role of the Federal Government in controlling the commercial relationship between entities in the intermodal distribution system.

The U.S. public port industry recognizes that a significant problem currently exists of trucks transiting the highways in excess of gross weight, axle weight, and Federal bridge formula limits. Defining the extent of the problem and advancing a comprehensive solution is a very difficult task that the Government, the transportation, and distribution community must jointly address.

Over the last five to seven years several recommendations have been discussed. However, a comprehensive solution, consisting of both Federal policy to address the issue in the domestic point-to-point trades and an international approach to address the issue in the international import/export trades has not been found.

While we understand that the focus of this hearing today is on the problems associated with the motor carriage of intermodal containers, it should be understood that the overall overweight truck problem that plagues the U.S. is not solely an overweight container problem. Intermodal containers are only one component of a much larger problem. Additionally, we must keep in mind that not all intermodal containers move by motor carriage. Some are shipped by rail and others move by barge and accordingly are not subject to the laws governing highway transit and do not constitute a threat to the Nation's motoring public or highway infrastructure.

Public ports are interested in resolving this issue for two reasons. First, to ensure the safety of marine terminal workers and others in the distribution chain; and second, to preserve and maintain the infrastructure which supports the intermodal movements to and from public ports. No solution will be adequate, in our view, if it significantly contributes to congestion or to the cost and time of moving waterborne commerce through our Nation's port system.

Mr. Chairman, you asked us to address some specific questions regarding the overweight truck issue. First, regarding the Federal Maritime Commission's decision to deny the two petitions concerning overweight containers, AAPA believes that the FMC acted in an appropriate manner.

Neither petition presented an appropriate solution to the problem. The elimination of per container rates would have affected all containers, not just those moving by motor carrier. In addition, the setting of maximum container weights by the FMC raises difficult issues of State preemption.

Intermodal containers are not the problem, nor is their maritime carriage. A proposal advocated by AAPA would permit the motor carrier to determine, given variables such as container weight, chassis, axle position, and surface route, whether he or she could legally dray the container.

You also asked for our assessment of the March 1989 Federal Highway Administration analysis of the Journal of Commerce PIERS data on overweight container movements. We believe that the study undertaken by the Federal Highway Administration, while an important first step, was conceptually limited in that it applied only to international movements and was limited to a one-year, one-day-a-month sampling of selected ports.

It is with this in mind that we advocate undertaking a comprehensive study of all truck movements, not only those in the international intermodal trade. The FHWA study showed that import containers are not the primary source of the overweight container problem, but that export containers are just as likely to be overloaded as import containers.

Finally, you have asked for suggested solutions to the overweight container problem. It is clear that overweight trucks are accelerating the deterioration of the Nation's highways. Without a comprehensive Government/industry cooperative effort to study and implement policies to resolve the problem, the condition of our infrastructure will only worsen, and the safety of our roads and terminals will be compromised.

There are steps that can be taken now which can, at least, address the international components of the problem, furthering our safety and infrastructure objectives without interfering significantly with the efficient transportation and distribution of cargo.

Last fall, AAPA established a special task force to study the overweight truck problem. After much deliberation, the task force recommended an AAPA industry position on the subject of overweight trucks.

That position, which was endorsed by our Board of Directors, supports the creation of an International Maritime Organization standard which would require the weighing, certifying, and documenting of all container movements in the U.S. international waterborne trades. Comparable requirements for U.S. domestic offshore trades should also be promulgated.

This requirement would provide to motor carriers, as well as to terminal operators, accurate information which should enhance terminal worker and equipment safety and contribute to accuracy in ship stability calculations and therefore ship safety. All connecting motor carriers should be provided with this weight information and should have the opportunity to have it verified at the first public scale without being exposed to fines.

It should also be recognized that intra-port truck movements, as compared to over highway movements, are unique and, under properly enforced permits and controls, do not expose the travelling public to the same degree of risk.

We believe this proposal would go far in addressing the problem of incomplete or inaccurate information which has been blamed as a major cause of the overweight truck issue. Secretary of Transportation Samuel Skinner has endorsed this proposal.

We reiterate our strong support for continued assessment of this problem and for policies to resolve both the domestic as well as the international components of the overweight truck issue.

Thank you for the opportunity to address the Subcommittee. I'm willing to answer any questions that you may have.

Mr. ANDERSON. Thank you very much, Mr. Chiarello. We'll hold our questions until we hear the others. Our next witness is Mr. Joseph Birgeles.

Mr. BIRGELES. Thank you, Mr. Chairman.

My name is Joseph Birgeles. I am the manager of Marine Affairs for the Port Department of the Port Authority of New York and New Jersey.

In the interest of time I have submitted my statement for the record and will make a brief summary of it.

The Port Authority has built and operated an extensive transportation network of marine and aviation facilities, tunnels, bridges, and a rapid transit system which serve the businesses and the people of the region. Currently, port related activities account for over three percent of gross national product, roughly $16.8 billion in economic activity and 180,000 jobs.

We are pleased for the opportunity to comment in this proceeding, particularly because of our unique position among port authorities in this country and that we operate tunnels, bridges, and road systems.

The following is a brief summary of our statement.

We suggest that a coordinated national and international standard needs to be established for maximum container weight limits. Everyone in the transportation and distribution industry is responsible for overloads.

Safety and preservation of infrastructure must be a primary concern. Local jurisdictions must be given flexibility to establish more restrictive standards where infrastructure cannot be upgraded to accommodate heavy units without extensive reconstruction, if at all. If national policy requires all localities to work toward a common weight standard, it must be recognized that Federal funds must be made available to assist in infrastructure rebuilding where this is necessary to meet the criterion.

Local jurisdictions should be prohibited from applying local permissive weight policies such as free permits or other arrangements which encourage frequent overloading. These permissive policies offer localities a parochial short-term commercial advantage at the expense of safety and increased infrastructure deterioration. What we require is a level playing field.

Accountability must be fixed, and economic penalties must be developed to make it unprofitable, not just inconvenient, for those who knowingly ship or transport illegally overweight marine containers. This must be backed by strong enforcement.

Regulations have to be uniform, realistic, and enforceable. Ideally they should maintain the present overall gross limit of 80,000 pounds.

To facilitate commerce and the movement of special freight such as heavy pieces of machinery which cannot be readily reduced to smaller components, a permit system must continue to exist on a case-by-case basis. Closed intermodal containers—vans—which contain divisible loads such as pallets, cartons, or other small units should not be granted overweight permits for highway transportation.

Thank you, Mr. Chairman.

Mr. **Anderson**. Thank you.

Our next witness will be Ms. Caroline Peterson, who is from my district.

Ms. **Peterson**. Thank you, Mr. Chairman.

Mr. Chairman, my name is Caroline Peterson and I represent the Port of Long Beach, California. The Port of Long Beach is the West Coast leader in total tonnage passing through a port and we are ranked second nationally in the number of containers handled. We estimate that the two ports of San Pedro Bay, Long Beach and Los Angeles, directly support the jobs of more than 500,000 people in the greater Southern California area.

In the interest of time, allow me to spend a brief minute addressing the concerns of the Committee today.

Mr. Chairman, the Port concurs with AAPA that the decision of the Federal Maritime Commission to deny two petitions recently submitted to them regarding overweight containers.

We also feel that the Committee should consider in their examination of the overweight container issue the following three possible solutions. First, the Federal Government should consider more stringent legislation which would phase out the grandfathered exemptions to the 23 States with gross vehicle weights in excess of the Federal standard of 80,000 pounds.

Second, the Federal Government should set national guidelines that are uniform for all overweight containers thereby allowing all ports to compete equally.

Finally, Mr. Chairman, the Port of Long Beach concurs with California's Intermodal Container Task Force recommending that a zone beyond a harbor district should be considered that would enable overweight containers to be transported either to facilities where containers can be repacked and certified to meet weight standards, or be transported to a nearby railhead.

Mr. Chairman, the Port of Long Beach commends you on attempting to resolve this problem of national significance. I appreciate this important opportunity to present the views of the Port today. I will be submitting a written statement for the record.

Mr. **Anderson**. Thank you, Ms. Peterson.

Our next witness is Mr. John Cushing.

Mr. **Cushing**. Thank you, Mr. Chairman.

Good afternoon. My name is John Cushing. I am the Intermodal Marketing Manager for the Port of Los Angeles, representing the Port of Los Angeles with the American Association of Port Authorities.

It is clear that as container volumes increase through our Nation's ports, it is important that the integrity of safety on the roads, at the work place, as well as the conditions of our transportation infrastructure, not be compromised by overweight containers. The Port of Los Angeles can attest to the increased volumes, having in 1989 handled 2.1 million teus, 1.4 million teus of which were loaded with cargo. These volumes have generated in the region one out of every 32 jobs which are port related.

Today's fast paced and competitive markets have created an evolution of uses and sizes of containers. This, combined with the aggressive intermodal throughput, has led to overweight containers affecting transport modes within the system.

We view this hearing, the Federal Highway Administration study of March, 1989, and various State studies as progressive steps toward resolving the issue of overweight containers on our Nation's roadways.

While action taken by the FMC would have possibly expedited the issue of overweight containers on the roadways, it may not have served all aspects of the transportation distribution chain. We do look to these hearings to provide for a standard by which the overweights can be addressed.

Given the complexity of reviewing the statistical information and its associated variables, we commend the FHWA for their attention to this task. The FHWA report does identify foreign ports exporting potentially overweight containers to the United States, yet it identified U.S. ports only by coast. As a national concern, review of individual ports can allow for follow-up as to why shippers are using one U.S. port over another for the movement of potentially overweight containers.

The FHWA study estimates that over a million international containers move as potential overweights each year. Also, according to the FHWA's industry sources, overweight domestic container moves do not exceed 100,000 annually. We request that there be a clear understanding of the potential domestic overweight containers on the roads in this study as well.

The Port of Los Angeles concurs with the AAPA that an Internal Maritime Organization standard be established whereby the weight of all containers be properly recorded. Parties handling a properly documented container would then do so as dictated by Federal road requirements and within the safety requirements of the handling equipment being used.

The Port of Los Angeles thanks this Subcommittee for its attention to this issue and welcomes any questions or comments you may have of us.

Mr. ANDERSON. Thank you.

Our fifth witness is Mr. Gerald L. Pope, Director of Trade Relations for the Port of Oakland.

Mr. POPE. Thank you, Mr. Chairman.

The Port of Oakland supports the testimony that has been presented on the issues raised by this Committee and delivered on behalf of the American Association of Port Authorities. I would, however, like to deliver very brief remarks on intra-port truck movements involving the movement of containers from rail yards to berths and to other facilities within a defined port area.

As has been previously stated, such intra-port transfers of containers from one facility to another under properly enforced permits and controls do not expose the traveling public to the same degree of risk as overweight containers moving on local and Federal highways.

The Port of Oakland first noted an increase in overweight tickets being issued in the Oakland harbor area, and we then found that one of the underlying reasons for this increase was steamship lines' per container rates. We analyzed the heavy container traffic and found that a substantial amount of it consisted of export commodities that are brought into the port area by rail box car or by hopper trucks for transloading into containers.

This meant that the fully loaded containers moved only a mile or so over ground level public streets from the transload facilities to the marine terminals. The particular layout of streets, container terminals, and adjacent rail yards at the Port of Oakland is unique in that they are served by a network of local streets within a defined port area. As a part of our program, we have initiated necessary steps to have these streets designated as a part of the port area.

In our further study, we discovered that some of these shipments were beginning to be diverted through northwest ports which were perceived to have either less overweight enforcement or lower penalties. We therefore commissioned as a part of our study a thorough examination of safety considerations involved in the transport of fully loaded containers. This study recommended the following minimum standards for any vehicle that carries loads in excess of the Federal maximum weights.

There are seven points that are covered in my statement which I wish to submit for the record. I won't repeat all of them except to say that the vehicle combination must meet the California Vehicle Code stopping distance requirements; the vehicle must be limited by regulation to specified maximum speeds and loads; the actual load on the tires must be at or lower than the rated load for the tire at the specified speed; and there must be a rigidly defined area that is covered by this permit system.

The port then got together with the City of Oakland Public Works and Police Departments and, with input from the California Highway Patrol and the Teamsters Union, we developed a joint City/Port Overweight Permit Program that went into effect in March of 1986.

The major elements of that program are: CHP—California Highway Patrol—inspection of both tractors and chassis every 90 days—four times as often as school buses are inspected; restriction of hours of operation; restriction to speeds of 30 miles per hour; the use of special triple-axle chassis; the maximum of 95,000 pound gross vehicle weight; maximum of 20,000 pounds per axle; coupled with heavy penalties for non-compliance—loss of permit and heavy fines.

Even though participation in this permit system is costly and time consuming to the transloaders, we feel that it is a success. An average of 200 fully loaded containers per week are moving under these permits. In the four years since this program has been in place, not one of these permitted vehicles has been involved in an accident.

Mr. Chairman, in concluding my remarks, I would simply point out that a permitting program closely supervised of the type the Port of Oakland has in place is a very workable solution for those ports that can contain the intra-port movements within their streets and boundaries. I want to emphasize the programs the Port of Oakland has in place do not infringe on any movements that may involve the Federal highway system. The movements spoken of here are confined to the port area.

Thank you for the opportunity of appearing before this Committee to deliver remarks on this very important subject.

Mr. ANDERSON. Thank you, Mr. Pope.

Before we begin questioning, I want to thank all of the witnesses for their patience and understanding while our full Committee mark up was in progress. Rest assured that the effort and time that you have put into your statements will be utilized to the fullest by the Members and staff of the Committee. We hope that your travel arrangements haven't been totally disrupted.

I do have a few questions to ask you myself; the other questions will be sent to you for written responses.

Let's start with the first one here.

Your testimony discusses proposals to treat intra-ports overweight containers with permits and controls within a specified zone around the harbor district. If such a proposal was adopted by the United States Department of Transportation, what is your reaction to the State being given the authority to establish such zones with appropriate permit fees and controls to ensure the maintenance of the roads, bridges, and safety of the traveling public?

Mr. Pope.

Mr. POPE. I think the comment I could make on that subject is that within certain ports and within certain port areas that are defined by streets that are readily controlled, such a system would be workable. To put it under a State program is something I think that would deserve a little bit more study. I could comment, though, that this is one of the options that was examined by the CalTrans Task Force. You heard yesterday from Mr. Van Berkle on the results of that task force.

I think it is something that could be worked in ports, but it would have to be the result of very careful study to make sure that what was being proposed is workable and does not expose highways and streets outside of port areas to overweight conditions.

Mr. ANDERSON. Does any other member wish to comment on that?

Mr. Cushing, you look like you're ready to comment.

Mr. CUSHING. The idea of streets designated for overweight containers could solve the overweight issue within the port area. We feel that considerations must be looked into as far as community groups' views on overweights going through their areas.

Along these lines we feel that it would be in the best interest that on the Federal level it would be addressed, keeping all ports in the United States on a competitive level.

Mr. ANDERSON. Any other comments?

If not, Mr. Pope, in your testimony, you refer to a study commissioned by the Port of Oakland to thoroughly examine the safety considerations of fully loaded containers. It would be helpful to have a copy of that. Could you submit a copy?

Mr. POPE. Yes, sir, I can. I will see that you do get a copy of the study and the work that we did as background to the permitting program that we established.

[The Port of Oakland Study referred to has been retained in subcommittee files.]

Mr. ANDERSON. If California were to act alone following the Cal Trans report recommendations, do you feel that trade would be diverted to other States? I also wonder if your conclusion is based on research or intuition.

Mr. POPE. There was——

Mr. ANDERSON. We've heard this several times. It has been suggested that if you do something with these things in your port, it will chase the business elsewhere.

Mr. POPE. One of the things that the CalTrans study did, and through the members of that study task force, was to look at competitive factors. The results of the task force study were that the measures that would be taken to correct the overweight problem should not create competitive situations that would place the California ports at a disadvantage to the northwest ports of Seattle, Tacoma, and Portland.

I think in the recommendations that were made that study, they made it very clear that competitive issues were a very important thing, should any legislation be drafted or proposed in California to relieve the problem.

Mr. ANDERSON. When I say "your testimony," I believe it covers all of you.

Your testimony advocates undertaking a comprehensive study of all truck movements. Do you envision this as a United States Department of Transportation study that would include a new and improved version of the PIERS study?

Mr. CHIARELLO. Yes, Mr. Chairman, I believe we do. I think we feel that there is an opportunity for all aspects of the transportation chain to work closely together to get a much more detailed review and analysis of the problem. I think we believe that it is something that should be done at the Federal level.

Mr. ANDERSON. Does anyone else wish to comment?

From your perspective, can the overweight containers problem be solved without a legislative solution.

Mr. CHIARELLO. I believe, Mr. Chairman, that what AAPA has recommended through the IMO mechanism to address the overweight intermodal container issue is just one very small piece of addressing the whole issue of overweight trucks. But at this point we believe, again, putting a very comprehensive evaluation done by the group of everybody involved in the transportation chain together to do an analysis, would result in the ability to address the issue without going through or using the legislative process.

Mr. ANDERSON. In other words, you're not going to suggest that we pass something now to try to get this thing straightened out?

Mr. CHIARELLO. Not at this time, Mr. Chairman.

Mr. ANDERSON. Do any of the rest of you have any suggestions on that.

Mr. BIRGELES. It may be necessary at some point to consider that because you must have a—as I put in my statement—a coordinated national standard which needs to be established for maximum container weight limits. It has to come somewhere that everyone is on the level field and that you do not have some ports or some areas of the country having different weights if you expect it to work.

It may be something that you may have to look at in the future.

Mr. ANDERSON. Are there any other comments on that?

We'll go in another direction then.

On dock rail facilities will reduce the need for drayage of containers around the ports. Are there ways that States can be supportive of this type of facility? If so, has this been true in your State?

Mr. CHIARELLO. The on dock issue only addresses the one end of the transportation chain. Speaking just for a moment from the Port of Baltimore, we have just completed the construction of an on dock facility which will not require a drayage over public roads. But when the container reaches its final point of destination in the hinterlands, then it must go over public roads to reach its final destination.

So you can address the issue from shipside to the railhead by having an on dock facility, but you are still faced with the issue and the problem of overweight containers moving from the end of the rail movement to its final point of destination.

Mr. ANDERSON. Do any of the others of you wish to make a comment on that?

Mr. CUSHING. It is recommended by the AAPA that the International Maritime Organization would set standards by which all parties involved in the transportation distribution chain would be properly notified, through proper documentation, of the container's weight. Therefore, with on dock or near dock facilities that do not require overweight containers on public streets or road ways, these containers would be moving through the transportation chain with right of refusal by any of the parties engaged in the chain due to the weights having been properly documented.

Mr. ANDERSON. Are there any further comments before we call up the next panel?

Thank you very, very much. We will be sending you questions in writing, and we hope that you will answer those so that we can complete the report.

[The following was received from the American Association of Port Authorities:]

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January 14, 1991

Honorable Glenn M. Anderson
Committee on Public Works
and Transportation
House Annex II, Room 586
Washington, DC 20515-2329

Dear Congressman Anderson:

This letter is in response to your letter requesting additional information on the issue of "overweight containers." As you can see, I have organized our response, question by question. We appreciate your interest in our views on this issue.

**Does your organization have input into the International Maritime Organization consideration of a proposal that would require the actual weight of the container to appear on the shipping documents? What is the current practice?**

AAPA is actively supportive of the creation of an International Maritime Organization (IMO) standard which would require the actual weight of the container to appear on the shipping documents. AAPA staff have expressed the Association's support for such an IMO standard with Department of Transportation officials who represent the United States at IMO meetings. In addition, the International Association of Ports and Harbors (IAPH) works closely with the IMO on this issue. AAPA has strong ties with IAPH, with many common members.

Currently, weight information appears on most international shipping documents and truck dispatchers have an obligation to their drivers and their companies to request this information from the forwarder, broker, shipper, consignee or ocean carrier that requests the drayage. While in some cases this information is calculated rather than weighed, it is usually accurate enough to allow the trucker to determine if he has a potentially overweight load. Only the trucker knows the length and weight of his vehicle and the capability of his equipment to adjust fifth wheel settings to redistribute weight.

**What portion of the 33 percent of potentially overweight containers in the PIERS study would you estimate were inadvertently versus intentionally overloaded? Is there a difference for imports versus exports?**

For most ports, it is difficult to estimate how many 20 and 40 foot containers are "intentionally" overloaded. The PIERS study included containers that may not have travelled over the highway. In ports with special permit systems, a higher proportion of the export 40 foot containers are intentionally loaded to their maximum capacity but do not travel significant distances on the highways. This is because those ports have a very carefully monitored permit program that allows cargo to be transloaded from rail cars or hopper trucks to containers in the harbor area and drayed short distances to marine terminals. In addition, major export commodities are often intentionally loaded heavy at inland points because they are brought into marine terminals by rail with no truck movement.

**Can you estimate what percentage of the overweight containers travelling by motor carriers are movements within 100 miles of the port or terminal where they are loaded and unloaded.**

It is difficult to calculate the percentage of overweight trucks hauling intermodal containers within 100 miles of a port because the transportation logistics of each port and commodity vary widely.

Some ports have a high percentage of their cargo originating or destined to points within a 50 miles radius. For example, the Port of Oakland estimates that less than five percent of the truly overweight container movements through the Port are destined to, or originate at points beyond 100 miles. On the other hand, many ports serve as transfer points for cargo originating or destined to points throughout the country. Moreover, the movement from an inland point may include only truck transport, only rail transport, or a combination of both truck and rail. If a heavy container leaves a port by rail and is unloaded at an inland point to be trucked to its final destination, the highway movement of the container is illegal. However, the container was moved legally the first 100 miles of its surface movement. The reverse is true in the case of exports.

**Foreign commerce seems to be using longer and heavier containers which could eventually work their way out to the United States, exacerbating the current problem. Do we have any leverage on foreign ports to control the size of containers?**

A recent survey conducted by the International Association of Ports and Harbours Committee on Cargo Handling Operations identified larger container sizes as a significant problem. The IAPH survey shows that current container equipment at many international ports cannot handle containers beyond IMO widths and that large scale expenditures in cranes and other handling equipment would be necessary to handle larger containers. Moreover, we are not aware of any foreign carriers that are advocating longer, higher or heavier containers. In fact, it is the American carriers who have developed and are utilizing 45-foot long, 9.5 foot high containers for international trade and 48 and 53 foot containers for domestic transport only. This trend is watched with some concern by the Japanese and some European countries that have only recently eased restrictions on high-cube 40-foot containers. In addition, operational and economic constraints will most likely preclude amending ISO standards to include larger containers.

**The FHWA PIERS study showed that U.S. exports are more likely than imports to violate weight limits. Do you agree with that finding? Should efforts to encourage shippers not to overload focus on the U.S. rather than foreign shippers?**

The FHWA PIERS study was extremely limited in that it applied only to international movements and was limited to a one-year, one-day-a-week sampling using the PIERS data for selected ports. However, the study did find that exports are much more likely to be in violation of truck weight limits than imports. This finding effectively dismissed a general myth in the shipping industry that the overweight container problem was strictly an "import problem." Efforts to discourage overweight trucks should not be directed to either imports or exports, but rather targeted on the total problem, to include overweight domestic movements. A solution that focuses only on imports would be inadequate.

**Are there economic factors, other than per-container rates, that might encourage overloading of containers by exporters?**

There are several other economic inducements that encourage overloading of containers, such as maximum use of specialized transport equipment (i.e., reefer containers), per trailer and per railcar rates by inland carriers, and fear of loss or damage if shipments are divided to insure legal loads.

**What alternatives are there, short of Congressional action, that could resolve the overweight container problem?**

Before a "legislative solution" is contemplated, it is important that industry and government officials understand the overweight truck problem. The solution chosen should be comprehensive, uniform and promote a system of accountability. All parties must share responsibility. And, perhaps most important, all ports and port ranges must be treated equally. There are no simple solutions. However, we believe that government and industry are now moving in the right direction. H.R. 5964, introduced by Chairman Anderson at the end of last session, is a critical component of our total understanding of the extent of the problem. Without an actual sampling of port/highway container movements, any "legislative solution" would be flawed. In addition, the fact that the various sectors of the industry are working together through the National Industrial Transportation League to put forth an industry solution is promising.

**On page three of your testimony, you indicated that AAPA had advocated a proposal to permit motor carriers to determine whether or not they could legally dray the container. Can you elaborate on this proposal and tell us in what forum it was introduced?**

Last year, AAPA formed a task force on overweight trucks. After much deliberation, the task force's work culminated with the development of a policy paper regarding overweight trucks. The recommendations set forth in the policy paper include a comprehensive government/industry cooperative study to assess the extent of the problem and support for an International Maritime Organization standard to require the weighing, certifying and documenting (at the port of origin) of all container movements in the U.S. international waterborne trades. The policy paper was approved by AAPA's Board of Directors at our 1990 Spring meeting. All connecting motor carriers should be provided with this weight information and should have the opportunity to have it verified at the first public scale without being exposed to fines. The recommendation places the ultimate responsibility on the truck driver, who is the best qualified as a professional commercial operator, to determine whether his/her equipment is capable of legally transporting the container.

Again, I would like to extend our appreciation to the Committee for its attention to this important issue. If AAPA can be of any further assistance to you, please do not hesitate to call me.

Respectfully,

Erik Stromberg

Erik Stromberg

RES/fal

[Mr. Birgeles' prepared statement appears on p. 303.]

Mr. ANDERSON. We'll now hear the next panel. Next we have Mr. Ronald B. Gottshall, Managing Director of the Transpacific Westbound Rate Agreement; also representing the South Europe/USA Freight Conference is Mr. Ralph W. Kreuger who is also the Senior Vice President of the Lykes Brothers Steamship Company, who is accompanied by Mr. David Smith as counsel.

Would you please rise and raise your right hands?

[Witnesses sworn.]

Mr. ANDERSON. Thank you. You may be seated, and Mr. Gottshall, you may begin.

## TESTIMONY OF RONALD B. GOTTSHALL, MANAGING DIRECTOR, TRANSPACIFIC WESTBOUND RATE AGREEMENT; RALPH W. KREUGER, SOUTH EUROPE/USA FREIGHT CONFERENCE, SENIOR VICE PRESIDENT OF THE LYKES BROTHERS STEAMSHIP CO., ACCOMPANIED BY DAVID SMITH, COUNSEL

Mr. GOTTSHALL. I'd like to thank the Committee very much for the opportunity to speak. I know you've had a long hard day, some of us have waited, but those are the things that happen in life.

In the interest of time, I'd like to ask that my written statement, which was previously submitted to the Committee, be accepted into the record along with the appendices to it.

I'd like to give you a little bit about TWRA and the trade in general to perhaps set the stage for our area of concern.

The TWRA is a rate-making body consisting of 10 carriers in the trade from the United States and Canada to Asia, basically from Siberia to Burma. We also have a subsection into the Indian subcontinent.

Our carriers handle—the specific trade amounts to 61 percent by weight of all United States exports. Our carriers handle about 67 percent of that or a total of about 40 percent of all United States exports. I might add that two of our members are two of the principle flag lines, APL and Sea-land Service. We also have four Japanese carriers, two Korean carriers, a Danish carrier, and also Neptune Orient which is a Singapore carrier.

The trade, as I indicated before, is essentially a weight trade. By that I mean that the vessels and the containers tend to weight out before the volume is ever used. That's pretty much true of all United States exports because of the nature of commodities that are exported out of the United States. I think that's apparent from any reading of census. But we have, for some reason or another, gotten into a trade which deals with agricultural materials, agricultural goods, raw materials, and other items, all of which tend to weight out before they cube out.

In our trade, it's not unusual to see vessels at full capacity, 85 percent of their slot capacity or their container capacity.

Unfortunately, as this overweight issue has overtaken us, we've actually had vessels weighing out at 65 percent of their capacity, indicating that they had some pretty heavy boxes on there.

The Pacific trade is different than other trades in that we have a very high percentage of 40 footers in our trade. Roughly our trade is divided—75 percent moves in 40 foot or greater boxes, some 45 in there, and about 25 percent in 20 foot boxes.

The inbound trade from Asia, unlike the outbound trade, is a very heavy volume trade. In other words, the goods take up more space than weight and as a result, the vessels will frequently come in with 105 percent, when the trade is running full, of their rated container capacity, and still they will not have reached the weight limit of the vessel. They have a few problem commodities moving in the import trade—some beer moving from the Philippines, hibachis from Taiwan, canned goods from several countries. These constitute a very small portion of the total import volume.

As a result, the inbound trade probably is commodities that would be susceptible to overloading are probably somewhere in the vicinity of 5 percent to 10 percent—really closer to 5 percent.

In our trade, though, it's significantly different, as shown in my report. We ran our own study of what you might call the FHWA type of study. We took the months of August 1989 and we also took the month of April 1990. So we have two relatively current months. We ran everything that moved during those two months by commodity and all of this is contained in the appendices.

The net result was, in our trade, all carriers, both the TWRA members and the non-TWRA members, in August 29.5 percent of all the 40 foot containers were over 46,000 pounds; in April is 30.8 percent. That was measured against 77,000 containers in August of 1989 and 76,000 in April of 1990.

In the 20 footers, we took 38,000 pounds as the benchmark. In August of 1989 we found that 48 percent of the total of 25,000 were overweight. In April of 1990 we found 47.9 percent of 20,000.

So when we looked at these numbers, we looked at the commodities that caused these overweights. We felt that the FHWA study was vindicated and that their conclusions were correct. I'm sure that there were a lot of people who found a lot of flaws with everything from soup to nuts, but its the way you want to use something which will determine what you find wrong with it. There were some people who simply didn't want to recognize that.

In any event, we believe there is a significant problem. We believe it's a problem that has to be recognized.

We also should take a look at what the TWRA's interest is in this. Basically the interest is three parts which are interwoven. First, we have the safety issue. We are concerned about the road and yard damage. When people talk about having overweight sit in port, that's fine. But it also has a tendency to chew up the container yard which, in many cases, the ocean carriers are responsible for. It's not only the ones in the United States, but also the ones in Asia.

We are concerned about the United States highways. We're also concerned about highways in other parts of the world. We're concerned about the cranes. The shoreside cranes in the United States can usually lift any of these so-called overweight containers. There's enough capacity. The same cannot be said of vessel cranes on feeder ships or cranes in other ports of the world which may not be up to the same standards as those in the United States.

Finally, we're concerned about the vessel. We simply don't want boxes that are going to wait at a vessel long before its capacity can even begin to be utilized.

As major corporations or companies, we want legal compliance. We want to comply with the road laws. We recognize that we have some responsibility on intermodal moves. I know in some of the testimony yesterday, there was some concern about local truckers getting tickets.

We have a tariff provision that we've had for several years that if a trucker handling cargo between a railhead and the yard as part of an intermodal move gets a ticket for an overweight container, we go after the shipper to try to get the money. That sounds pretty good in theory, but most of my members tell me its futile because they say, "Well, you want to collect the ticket, fine, but don't ever plan to do business with me again." You then have to choose whether you want to go to court to collect a $500 overweight ticket—that's not practical. But we have taken some efforts to try and mitigate the problems with the truckers.

The final thing that we have a problem with—and it all interweaves—is liability. Most of the carriers are major corporations either in the United States or in foreign countries certainly with a large U.S. presence. There's a perception of deep pockets. Although any of you who have studied the shipping industry know, there are holes in the pockets, but it looks that way anyway. We would like to eliminate the problems that create these liability exposures for ourselves and our member lines.

I'd like to give a little bit of attention to the study which I've briefly mentioned before. I'll narrow this down a little bit. I think both of the studies understated the weight. The FHWA study used a slighter lower threshold for 40s than we did, but in any event, the weight shown on a bill of lading is frequently the weight on which freight is paid. It may not cover pallet allowances.

The second thing in the weight understatement is that a trailer combination—which is a chassis and a container—can be as little as 12,100 pounds—one carrier has a 6,000 pound chassis and a 6,150 pound container--to as high as 16,000 if you're using one of the steel boxes and one of the heavier chassis that are out in the fleet.

So what you have is a 4,000 pound difference in which the overweight could actually have been much higher than that which was shown in the PIERS data. So we think that's there.

We also think there is some overstatement of overweight containers because we realize that some cargo is physically loaded in the port area from a rail car or from a collection of trucks into a container. When the container leaves the United States in an overweight status, it in fact has never been on the roads of the United States.

However, a lot of the loading in the ports and what people like to call port traffic is actually performed outside the port limits. It's performed to areas adjacent to the port called CFSs. But even so, I feel that there is a significant portion of overweight containers which show up in the list which I know for a fact have moved over the road either in whole or in part.

There was a lot of talk the other day—and I think this is important about the rating of containers. Well the equipment register shows that the container can hold 58,000 pounds. Well, big deal. That's the time it came out of the factory when it held 58,000 pounds. I think as we all get older, we realize that our capacity gets slightly decreased. It's the same way with containers. They don't hold that anymore. Two or three years working in a ship, sitting in the guides, in the cells, and being twisted by the motion of the ship reduces the effectiveness of the container. It still has plenty of reserve, but it's not a 58,000 pound capacity container.

The other thing I find amusing is that if you look at conventional van equipment used for domestic services such as those operated by motor carriers or railroads, you'll find that that's around the 13,000 pound area. That has anywhere from 50,000 to 60,000 pound capacity. Nobody runs around and says that we have to load that to capacity. I think that's an empty argument.

There's also the revenue enhancement aspect which has been brought up by several people and cited to the FMC at great length on exempt commodities not filed with the Federal Maritime Commission. We did have an opportunity, two years ago, to change our agreement that we operate under to provide that there will be no per box rates on those commodities. We can do that because they're not subject to independent action.

Therefore there's a little quirk in the shipping act. We took advantage of it. It has helped on some commodities. We have, for example, all of the forest products, all of the waste paper, and all of the metal scrap is basically—we put that on a per ton rate. It has helped. It hasn't solved the problem, but at least we know that economics of our box will not dictate how it's loaded.

In any event, whether you were to eliminate per container rates—which we asked the FMC to do—or not, whatever number we use to divide the market will ultimately set the price for movement of goods. When ships are pulled the price goes up. When the vessel utilization goes down, the price drops. When people can't market, we reduce the prices.

I think the trade shows that we have been competitive in the world markets. It has been done, not because of transportation, but because there's been a significant change to dollar from five years ago. In the Pacific trade alone we've seen our market grow 80 percent over five years from roughly 800,000 containers up to 1.5 million containers.

There's one thing that I'd like to say. I keep hearing these indivisible loads. Now keep in mind that our conference also has a significant waste paper loads. If you look in the New York area we move a lot of waste paper from New York which is all heavy loaded. We move clay from down south which is all very heavy loaded.

I can't find a case for indivisible loads. Originally, supposedly, it was put in because there had to be customs clearance moving inland and then somehow it was bootstrapped to apply to exports which have absolutely no customs implications. I don't know how you get rid of it. I think you should pressure the States. But the Congress wasn't too bad when it threatened to cut off highway funds for people who didn't meet speed limits. As a taxpayer I object to paying States for highway funds when they use their own policies to chew up their own roads. It's just a thought in that area. I'm certainly not an advocate of that position, but I thought it might be a good idea to think about it.

Finally, and just in conclusion, I'd like to see us get rid of box rates. I'd like to look at long-term solutions for international organization. In this connection—I know it sounds peculiar coming from the maritime area—I would like in these international organization for highway people to be involved, not maritime. The maritime guy thinks of the ship's crane, the vessel's crane, and that's significantly different than our highways. I think that should be a key point. If we go that route, it's something to do.

I might add that Japan would be a nice place to start. It has bridge laws similar to the United States, although it doesn't enforce them as much. But it does take 24 percent by weight of all United States exports. So that's a nice place to start. They have a nice structure over there. You can head through Europe and the rest of it.

I think we should step up enforcement of existing laws at all levels. California is a good example. If you read the studies, cargo moving through California ports—even though it's much larger—has a much lower percentage of overweights. I think that's due to the enforcement of the CHP and the general policies of the State.

I'd like you to accept the idea that a massive problem cannot be solved by a single massive solution. As we find solutions to each facet of the problem, let's apply them whether it's legislative, or whether it's done through commercial channels. We know that getting rid of box rates would help. We can get rid of indivisible loads. I'm sure there's a lot of other things we could think of.

And finally, back to the studies, you can't accept the premise there is no problem of overweight on the highways. Containers come up because we're very visible, high profile, and everything we do originates or is destined to a major urban area on the domestic portion of an international journey. That's where the enforcement is highest. We get caught more often. We don't want to be caught.

Thank you very much, Mr. Chairman, and I'm sorry I took so much time.

Mr. **ANDERSON**. Thank you, Mr. Gottshall. I'll hold my questions until the other two have finished.

Our next witness is Mr. Ralph W. Kreuger.

Mr. **KREUGER**. Thank you, Mr. Chairman. I'm pleased to appear before you today to discuss the overweight container issue. We very much appreciate the Subcommittee's invitation to present our views on this very important subject.

I am presently Senior Vice President of the Intermodal Division of Lykes Brothers Steamship Company. Lykes is a United States flag liner carrier based in New Orleans, Louisiana. I am testifying today on behalf of the South Europe/USA Freight Conference—more commonly referred to as SEUSA—a steamship conference formed pursuant to the Shipping Act of 1984. I am accompanied today by David Smith of the law firm of Dow, Lohnes, and Albertson, counsel for SEUSA.

In addition to Lykes, SEUSA's membership includes 15 other ocean common carriers. SEUSA services the trade from the Mediterranean to the United States. Its members, however, include carriers—both U.S. and foreign flag—which are active in virtually every U.S. trade of consequence. A complete list of the SEUSA members is annexed to my submitted testimony.

For the sake of brevity, I would like to summarize my written statement, and then directly answer the four written questions posed to SEUSA by the Subcommittee in its invitation to testify.

In general, SEUSA believes the problem of overweight containers is a serious one that needs immediate attention. We also believe that the current regulatory scheme is inadequate, primarily because it is scattered among the Federal, State, and local governments. SEUSA believes that Congress needs to step in and enact a regulatory scheme that sets national weight standards that clearly preempt State and local regulation. With a single Federal set of standards, those who load containers and tender them for shipment will be able to clearly understand what requirements must be met.

In response to the Subcommittee's specific questions—first the Subcommittee asked for SEUSA's reaction to the FMC's denial of its petition with regard to overweight containers. As expected, we were disappointed that the Federal Maritime Commission did not grant this petition. However, SEUSA also believes that the FMC's denial of the petition and the reasons that it gave for that denial point out the need for Congress to enact legislation that preempts State and local regulations and that clearly delineates Federal agency responsibility in this matter.

The Subcommittee's second question asked for SEUSA's evaluation of the Federal Highway Administration's March, 1989 study of the Journal of Commerce PIERS data on overweight container movements. The FHWA study was an excellent first step in defining the problem. But the study was only able to provide theoretical estimates of the volume of overweight containers moving on our highways today. Additional study is required to determine the true number of boxes that are actually overweight.

I note in this regard that 20-foot containers can be legally transported with specialized equipment at weight levels in excess of 45,000 pounds of cargo over our highway system. Lightweight chassis coupled with lightweight containers can likewise carry loads far in excess of 45,000 pounds of net cargo in a 40-foot container. Pier-stuffed cargo or exclusive rail container movements can be handled up to the certified lifting capacity of the container utilized for that movement. Any further study of the issue should give consideration to this technology.

The third question posed the issue as to what evolving transportation or economic factors have contributed to the overweight container problem. This is a very insightful question with no clear-cut or readily apparent answer. As set forth in detail in our written statement, SEUSA believes that one important factor that has contributed to this problem is the general increase in intermodal movements of cargo in which the cargo is loaded into the containers by the shipper customer and is not unloaded until that container reaches its final destination. In such shipments, ocean carriers and motor carriers have little practical control over the weight of the containers tendered to them by the shipper or the distribution of that cargo inside the container.

Another factor is the increase in demand for dense cargos that are most susceptible to overloading. There, of course, have also been the promulgation of box rates for such cargoes, which do generate an economic incentive to load equipment beyond the point at which specialized equipment could legally haul it on our major highways.

I believe the problem is further exacerbated by a lack of understanding by foreign shippers, and even some domestic shippers, as to the need to uniformly distribute their cargo over the floor area of the container and request from carriers—specialized equipment if necessary—to handle heavy units in a legal fashion.

The fourth question posed asked our proposed solution to the overweight container problem and whether or not we would recommend administrative or legislative remedies. In this regard, we believe that only Congress, by definitive action to preempt the patchwork of Federal, State, and local regulatory schemes now in place, can effectively deal with this United States transportation problem. We firmly believe that the issue requires a Congressional mandate with an established time frame for action.

Again, we appreciate the opportunity to appear before you today. I would now be pleased to answer any of your questions.

Mr. **Anderson**. First I might say that my previous remarks about the Committee's thanks for the witness' patience, time, and effort were also meant for you as well as the others that were here. We want to thank you and we will be following up this hearing with written questions to you.

Mr. Gottshall, in your testimony today in support of the PIERS study, it's a little bit different than what we heard yesterday. What portion of the 33 percent potentially overweight containers in the PIERS study would you estimate are inadvertently versus intentionally overloaded?

Mr. **Gottshall**. I think that probably—when somebody overloads, I think they know what they're doing. However, I will give a little bit of fudge factor for what I call "intentional but due to circumstances" and that is cargo where somebody has 45,000 pounds, he orders equipment from a carrier and gets the heaviest combination of equipment possible and he has to ship it.

I think that people overload knowingly. But then—1,000 pounds or so—I'll forgive that. But past that I think they know it.

That's on exports. Not on imports they may now know it. On imported cargo—and I think Mr. Kreuger can better answer that—but as far as exports are concerned, I believe that U.S. shippers who also ship domestically are very much aware of our road laws. When they exceed those road laws, they know what they're doing.

Mr. **Anderson**. Mr. Kreuger, would you like to comment?

Mr. **Kreuger**. Sure. On the import side, you do have the language barrier and problems of explaining to foreign shippers. A quick anecdote might prove the point very well. We recently had a shrimp shipper who we stressed that 35,000 pounds was all you could put in that reefer of cargo—35,000 net cargo. So he carefully weighed out 35,000 pounds worth of shrimp, put them in cartons, filled the cartons with water, put the cartons in bigger cartons, filled it with water, and by the time he was all done it was excessively overweight.

So the language barrier in stressing it with foreign shippers that are coming this way is a serious problem in teaching them, especially first time shippers.

Mr. ANDERSON. Mr. Smith, would you like to comment on any of this, or are you just there to make sure they say the right thing?

Mr. SMITH. Mr. Kreuger is the expert here, Mr. Chairman. I defer to his expertise.

Mr. ANDERSON. Okay. We seemed to get quite a bit of discussion the other day and elsewhere on intentionally and unintentionally overloading these things. It's hard for us—what we're trying to do is to get the information from the experts—we hope that you're the experts—so that when we pass new laws we do it right.

Mr. KREUGER. There is definitely some of both.

Mr. ANDERSON. The FMC testimony mentions the SEUSA and the TRWA petitions as being in one sense too narrow and in another overly broad. Do you think a petition could be carefully crafted that would allow the FMC to resolve the problem of overweight container movements?

Mr. GOTTSHALL. I thought we both took a different shot at it. Certainly, in our case, the reason we didn't go with the SEUSA as our original position was that in an export trade the cargo may have traveled 2,000 miles before it gets weighed. However, on an import trade, such as SEUSA, it made eminent sense.

We found that the incident of box rates in our trade, some of which we have on commodities—and we compete with a lot of people who are independent carriers—we were unable to enforce any situation. We felt that if there was a level playing field and we got rid of box rates, that would remove a lot of the economic incentives for shippers to overload.

So then we have to say, "What can we do with the FMC? Could we possibly craft another petition for them?" We spent a lot of time on trying to isolate what was important to us and came up with that. I'm sure that SEUSA did the same thing. I'm not sure what we could do to get them backed up.

Mr. KREUGER. The main problem we see on the inbound trades is the education of foreign shippers. They see themselves shipping to one country with 50 different sets of rules and regulations for highway movements. It becomes very difficult, once you've educated a shipper as to what he can do into Virginia but he can't do that into Maryland unless he goes over the Port of Baltimore, he can't do that here, but he can do that there. It is very difficult and we do need some overall Federal standard to get rid of the patchwork.

Mr. ANDERSON. Mr. Gottshall, if California were to act alone following the CalTrans report recommendations, do you feel that trade would be diverted to other States? Is your conclusion based on research or intuition?

Mr. GOTTSHALL. I would have to say it would be on the intuitive side, but that's backed up by a lot of knowledge about the trade. You have a huge infrastructure in place today with the ports, with the carriers, and a tremendous amount of capital investment on their part. I can't see a shipper, for example, of grapefruit routing it over Seattle versus sending it over Long Beach simply to avoid weight laws. The indigenous nature of much of the commodities that move would favor California. It would not disadvantage California if they were to take a different action.

California has been stricter over the past several years in the enforcement of their existing laws and they intend to get tougher. But I think California would not lose any. I think that's shared by most of the people I know in the business.

Mr. **Anderson**. Are there any other comments on that?

Mr. **Kreuger**. It's not significant in the SEUSA trade but, as Mr. Gottshall said, it's indigenous, it's going to California, that's the destination. It will go there.

Mr. **Anderson**. I've noticed in the past that sometimes when you send something one place, if they can't handle it, it goes to another port. We see this all the time. We're gradually getting the ports that they can take anything. I can remember when the L.A. Port was 15 feet deep. Containers had to go to San Diego or someplace and then truck it because they couldn't handle it. So in almost everything we've had to bring our things up to certain requirements to make our ports relatively similar.

Are United States exporters typically aware of the highway weight limits at destination points in Europe and in Asia?

Mr. **Gottshall**. I don't think they are that aware of it. For example, it's always a shock when I tell them that Japan, Taiwan, and Korea all have road laws. Korea, for a while, was making us off-load anything that was over 22 kilotons which is roughly 48,500 pounds of cargo.

But I don't think most United States shippers are aware of this. Another thing I don't think they're aware of is that they think it's going to be discharged at the port anyway. They think they're just shipping port to port and it doesn't make any difference.

In our business, people who call at Tokyo, they'll give a Yokohama bill of lading to be competitive with those carriers who call directly at Yokohama and vice versa. So a Tokyo caller may have to handle the cargo that's overweight by Japanese standards 30 miles over the road. We have found that some of our members have been ticketed on that. The problem is that surfacing it in Japan is considered a cost of doing business.

Mr. **Anderson**. Mr. Kreuger, would you have any comment on that?

Mr. **Kreuger**. Yes. Basically, in Northern Europe and in most of the trades served by SEUSA and/or Lykes Lines, the weight limits are higher than United States standards except for some of the permit States.

Mr. **Anderson**. When you say Northern Europe, who are you referring to?

Mr. **Kreuger**. Northern Europe, Southern Europe, the European continent.

Mr. **Anderson**. The whole continent?

Mr. **Kreuger**. Yes, the whole continent of Europe because——

Mr. **Anderson**. I didn't know there was any difference between the countries over there in Europe itself.

Mr. **Kreuger**. Oh yes there are—tractor trailer configurations, length configurations, length constraints, and weight constraints. They are trying in EC '92 (European Community) to come up to this 88,000 pounds but they haven't agreed to it yet.

Many parts of the world have heavier than our normal 80,000 pounds, but when you get into the 90,000 pound, 95,000 pound, and 100,000 pound States, then those States that we have here can export heavier cargos than foreign countries can take.

Mr. ANDERSON. What alternatives are there, short of congressional action, that could resolve the overweight container problem?

Mr. KREUGER. None that we've been able to think of, sir.

Mr. ANDERSON. In other words, discussions between the shippers themselves from different countries, get them to come to some sort of agreement——

Mr. KREUGER. The confusion stems from the different rules and regulations that we have at the State level. If you're going to the State of Maryland, for example, 90,000 pounds is okay if you go over the Port of Baltimore, but not over the Port of Norfolk. These things are very difficult to explain in Italy.

Mr. ANDERSON. It's pretty hard to explain it right here. [Laughter.]

Don't foreign countries have similar differences, though?

Mr. KREUGER. Between countries, but not between provinces within the same country.

Mr. GOTTSHALL. I think that there's going to have be some legislative solutions along the line. I endorse what the NIT League is trying to do—the National Industrial Traffic League—and the carriers as a task force to try to come up with some commercial solutions.

But unfortunately it's like all the law abiding people in town getting together and agree not to do anything wrong. There are a lot of people who are not in the National Industrial Traffic League who are the problem. Some of our waste paper shippers—whatever their name is this week—they're not the same class, but they are major shippers of a particular commodity that tends to be overweight.

So I wish them a lot of luck in that. I think it will help. Like I said, all the help we can get is worthwhile.

I think that State enforcement of existing laws is something that should be stepped up. I think, finally, there is room for education both here and abroad. Ours is a little bit different. Some of our overweights are caused by the loading patterns ordered by foreign importers. In some cases getting to those importers to get the idea across that they can't send 50,000 pound shipments because we can only handle 45,000. Maybe we need some kind of brochure to give them to show them what U.S. road laws are.

Those types of things might help, but I think we're going to need some legislative help along the way.

Mr. ANDERSON. My next question I think is to both of you. Mr. Gottshall or Mr. Kreuger, what is your reaction to the CalTrans proposal to give the California Highway Patrol access to private weight records?

Mr. GOTTSHALL. I'm not a lawyer, but my recollection is that in the Shipping Act of 1984, we cannot give that kind of information except when it's asked for by a court of law under a subpoena or by a government agency, the FMC. I think there would be a legal problem with that.

Mr. ANDERSON. In other words, you couldn't volunteer that. You'd have to have a real official request from an official body.

Mr. GOTTSHALL. I think so. They could come in and say, "How many loads of tiles do you have?"—or beer, or nails, or batteries, or hibachis, or whatever it is. The carriers could certainly say, "Yes, we have several loads." They can sit and wait around for them, but I'm not sure that they could identify the cargo. I leave that up to the lawyers. I know if I was on the other side of the fence I would be running to court.

Mr. KREUGER. I likewise question whether we could legally give that unless we were mandated by Congressional decree because it could violate the Shipping Act, the Privacy Act, or something else on the confidentiality.

One problem in even giving our documentation is the issue of—you have two containers said to contain the following mixed machinery and it weighs 65,000 pounds in two containers. That looks fine. One has 10,000 and the other has 55,000, which is another defect, you could say, in the PIERS study that you don't really know what each and every container, on a multiple container bill of lading, weighs.

Mr. ANDERSON. Does anyone else want to add anything on any subject before I bring it to a close?

Anyway, I do want to thank the three of you. The Subcommittee will meet for an additional day of hearings in the near future and we will announce the time and date shortly. On that date we'll hear from people like Congresswoman Bentley and the other witnesses that did not appear today.

[Mr. Gottshall's prepared statement appears on p. 309.]

[Mr. Kreuger's prepared statement appears on p. 327.]

Mr. ANDERSON. So, with that, today's hearing is adjourned.

Thank you very much.

[Whereupon, at 5:41 p.m., the subcommittee was adjourned, to reconvene at the call of the Chair.]

## PREPARED STATEMENTS OF WITNESSES

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### STATEMENT BY

### JOSEPH J. BIRGELES

### THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

### BEFORE

### THE U.S. HOUSE OF REPRESENTATIVES

### COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

### INVESTIGATIONS AND OVERSIGHT SUBCOMMITTEE

### REGARDING THE MOVEMENTS OF INTERMODAL CONTAINERS BY TRUCKS

### WASHINGTON, D.C.

### JUNE 28, 1990

GOOD MORNING. MY NAME IS JOSEPH BIRGELES. I AM MANAGER OF MARINE AFFAIRS FOR THE PORT DEPARTMENT OF THE THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY.

THE PORT AUTHORITY'S INVOLVEMENT WITH PORT ISSUES IN THE NEW YORK REGION BEGAN IN 1921 WHEN THE GOVERNORS OF NEW YORK AND NEW JERSEY SIGNED WHAT IS COMMONLY KNOWN AS THE PORT COMPACT, APPROVED BY CONGRESS, ESTABLISHING THE PORT AUTHORITY AS A SELF-SUPPORTING BISTATE AGENCY EMPOWERED TO UNDERTAKE PROJECTS AUTHORIZED BY THE TWO STATES THAT PROMOTE AND PROTECT THE COMMERCIAL AND TRANSPORTATION INTERESTS OF THE NEW YORK AND NEW JERSEY REGION.

SINCE ITS INCEPTION, THE PORT AUTHORITY HAS BUILT AND OPERATED AN EXTENSIVE TRANSPORTATION NETWORK OF MARINE AND AVIATION FACILITIES, TUNNELS, BRIDGES AND A RAPID TRANSIT SYSTEM (PATH), WHICH SERVE THE BUSINESSES AND PEOPLE OF THIS REGION. CURRENTLY, PORT-RELATED ACTIVITIES ACCOUNT FOR OVER 3 PERCENT OF GROSS REGIONAL PRODUCT, ROUGHLY $16.8 BILLION IN ECONOMIC ACTIVITY AND 180,000 JOBS.

WE ARE VERY PLEASED FOR THE OPPORTUNITY TO COMMENT IN THIS PROCEEDING, PARTICULARLY BECAUSE OF OUR UNIQUE POSITION AMONG PORT AUTHORITIES IN THIS COUNTRY. THE ISSUE OF HIGHWAY TRANSPORTATION OF INTERMODAL CONTAINERS NOT ONLY AFFECTS OUR MARITIME BUSINESS, BUT THE MAINTENANCE OF OUR BRIDGES, TUNNELS, APPROACH ROADS AND MARINE TERMINAL HIGHWAYS. FOR THIS REASON, WE COMMEND YOU FOR TAKING AN INTEREST IN THIS IMPORTANT NATIONAL PROBLEM, AND OFFER OUR ASSISTANCE TOWARD FINDING A FAIR, EQUITABLE AND COMMERCIALLY VIABLE SOLUTION.

### SUMMARY

1. THE PROBLEM OF ILLEGAL MOTOR CARRIAGE OF INTERMODAL CONTAINERS ON U.S. HIGHWAYS, IS UNIVERSAL. IT EXISTS AT EVERY PORT OR INLAND TERMINAL WHERE CONTAINERS ARE HANDLED.

2. COORDINATED NATIONAL AND INTERNATIONAL STANDARDS NEED TO BE ESTABLISHED FOR MAXIMUM CONTAINER WEIGHT LIMITS.

3. SAFETY AND PRESERVATION OF INFRASTRUCTURE MUST BE PRIMARY. FOR EXAMPLE, SOME LOCALITIES TODAY ISSUE PERMITS FOR MAXIMUM AXLE WEIGHTS WHICH MAY EXCEED THE MANUFACTURERS' SPECIFICATIONS FOR TIRE CAPACITY, PARTICULARLY FOR THE 12-PLY TIRES TYPICALLY FOUND ON CONVENTIONAL STEAMSHIP CHASSIS.

4. LOCAL JURISDICTIONS MUST BE GIVEN FLEXIBILITY TO ESTABLISH MORE RESTRICTIVE STANDARDS WHERE INFRASTRUCTURE CANNOT BE UPGRADED TO ACCOMMODATE HEAVY UNITS WITHOUT EXTENSIVE RECONSTRUCTION, IF AT ALL. IF NATIONAL POLICY REQUIRES ALL LOCALITIES TO WORK TOWARD A COMMON WEIGHT STANDARD, IT MUST BE RECOGNIZED THAT FEDERAL FUNDS MUST BE MADE AVAILABLE TO ASSIST IN INFRASTRUCTURE REBUILDING WHERE THIS IS NECESSARY TO MEET THE CRITERION.

5. LOCAL JURISDICTIONS SHOULD BE PROHIBITED FROM APPLYING LOCAL PERMISSIVE WEIGHT POLICIES SUCH AS FREE PERMITS OR OTHER ARRANGEMENTS WHICH ENCOURAGE FREQUENT OVERLOADING. THESE PERMISSIVE POLICIES OFFER LOCALITIES A PAROCHIAL SHORT-TERM COMMERCIAL ADVANTAGE AT THE EXPENSE OF SAFETY AND INCREASED INFRASTRUCTURE DETERIORATION.

6. EVERYONE IN THE DISTRIBUTION/TRANSPORTATION CHAIN IS RESPONSIBLE FOR OVERLOADED UNITS AT THEIR POINT OF CONTROL OR RESPONSIBILITY FOR THE MOVEMENT. THIS INCLUDES SHIPPERS AND RECEIVERS, STEAMSHIP OPERATORS, TERMINAL OPERATORS, MOTOR CARRIERS, CHASSIS LESSORS, EQUIPMENT MAINTENANCE ORGANIZATIONS, REGULATORY BODIES AND ENFORCEMENT AGENCIES.

7. ACCOUNTABILITY MUST BE FIXED, AND ECONOMIC PENALTIES MUST BE DEVELOPED TO MAKE IT UNPROFITABLE, NOT JUST INCONVENIENT, FOR THOSE WHO KNOWINGLY SHIP OR TRANSPORT ILLEGALLY OVERWEIGHT MARINE CONTAINERS. THIS MUST BE BACKED BY STRONG ENFORCEMENT.

8. REGULATIONS HAVE TO BE UNIFORM, REALISTIC AND ENFORCEABLE. IDEALLY THEY SHOULD MAINTAIN THE PRESENT OVERALL GROSS LIMIT OF 80,000 POUNDS.

9. TO FACILITATE COMMERCE AND THE MOVEMENT OF SPECIAL FREIGHT SUCH AS HEAVY PIECES OF MACHINERY WHICH CANNOT BE READILY REDUCED TO SMALLER COMPONENTS, A PERMIT SYSTEM MUST CONTINUE TO EXIST ON A CASE-BY-CASE BASIS. CLOSED INTERMODAL CONTAINERS ("VANS") WHICH CONTAIN DIVISIBLE LOADS SUCH AS PALLETS, CARTONS OR OTHER SMALL UNITS SHOULD NOT BE GRANTED OVERWEIGHT PERMITS FOR HIGHWAY TRANSPORTATION.

THE PORT AUTHORITY OF NEW YORK & NEW JERSEY (PANY&NJ) HAS LONG BEEN CONCERNED ABOUT THE ILLEGAL HIGHWAY MOVEMENT OF OVERLOADED INTERMODAL CONTAINERS OVER THE NATION'S HIGHWAYS. WE HAVE A UNIQUE PERSPECTIVE TO

THIS PROBLEM, HAVING BEEN ONE OF THE PRIME MOVERS BEHIND THE CONTAINER REVOLUTION. AT THE OUTSET, WE MUST EMPHASIZE THAT THE PROBLEM IS WITH THE HIGHWAY TRANSPORTATION OF CONTAINERS. ALTHOUGH HIGHWAY TRANSPORT OF OVERWEIGHTS HAS PROBABLY TAKEN PLACE SINCE THE BEGINNING OF CONTAINERIZATION, UNTIL RECENTLY IT WAS NOT GENERALLY RECOGNIZED AS A SERIOUS OR UNIVERSAL PROBLEM. EXEMPTIONS WERE FORMERLY PERMITTED TO THE FEDERAL "BRIDGE FORMULA" SO THAT AXLE WEIGHTS FOR MARINE CONTAINERS WERE ALLOWED TO EXCEED LIMITS ESTABLISHED FOR OTHER TYPES OF TRUCKS. SOME STATES OR PORTS ESTABLISHED SIMPLE AND INEXPENSIVE PERMIT PROCEDURES TO GIVE THEIR LOCATIONS A SHORT-TERM COMMERCIAL ADVANTAGE BY ALLOWING OVERLOADED CONTAINERS TO MOVE ON THEIR HIGHWAYS.

TO DIRECT ATTENTION TO THE NATIONAL PROBLEM OF HIGHWAY TRANSPORTATION OF INTERMODAL CONTAINERS, THE FIRST PUBLIC "WEIGH-IN" DEMONSTRATION IN THE UNITED STATES WAS HELD AT THE PANY&NJ FACILITIES AT PORT ELIZABETH ON MARCH 15, 1988. THE BI-STATE HARBOR CARRIERS CONFERENCE OF THE NEW JERSEY MOTOR TRUCK ASSOCIATION, IN CLOSE COOPERATION WITH MAHER TERMINALS, THE STEAMSHIP OPERATORS INTERMODAL COMMITTEE (ATLANTIC REGIONAL COMMITTEE) AND THE PORT AUTHORITY OF NEW YORK & NEW JERSEY, TEST-WEIGHED SOME TWO DOZEN CONTAINERS LOADED WITH KNOWN "HEAVY" COMMODITIES.

THE WEIGH-IN, ALTHOUGH NOT INTENDED TO BE A STATISTICALLY "REPRESENTATIVE" SAMPLE, PROVED THAT SOME INTERMODAL CONTAINERS, LOADED WITH COMMODITIES COMMONLY MOVING IN TRADE ROUTES THROUGHOUT THE WORLD AND IMPORTED OR EXPORTED THROUGH MOST U.S. PORTS, WERE SO HEAVY THAT THEY COULD NOT BE SAFELY OR LEGALLY TRANSPORTED OVER OUR NATION'S HIGHWAYS ON THE TYPES OF CHASSIS AND TIRES IN COMMON USE.

A YEAR AFTER THIS PIONEERING EFFORT, NEW TYPES OF CHASSIS WERE BEING DEVELOPED BY MANUFACTURERS FOR THE PURPOSE OF MITIGATING THE OVERWEIGHT PROBLEM. ON JUNE 9, 1989 THE BI-STATE HARBOR CARRIERS CONFERENCE WITH ALLIED INTERESTS INCLUDING THE STEAMSHIP OPERATORS INTERMODAL COMMITTEE (ATLANTIC REGIONAL COMMITTEE) AND THE ATLANTIC COAST STEVEDORES' ELIZABETH MARINE TERMINAL, RE-TESTED "HEAVY COMMODITY" LOADS ON BOTH PROTOTYPE AND EXISTING CHASSIS. CONTAINERS WITH KNOWN WEIGHTS WERE WEIGHED ON "CONVENTIONAL CHASSIS," THEN PLACED ON NEW PROTOTYPE UNITS AND RE-WEIGHED. THE RESULTS WERE ENCOURAGING: **MOST HEAVY CONTAINERS WHICH WOULD BE LEGALLY OVERWEIGHT ON CONVENTIONAL CHASSIS, COULD BE TRANSPORTED SAFELY AND LEGALLY ON THE NEW TYPES OF EQUIPMENT BEING DEVELOPED!** THE PROBLEM IS NOT NECESSARILY WITH THE TOTAL WEIGHT OF THE CONTAINER, BUT RATHER WITH THE DISTRIBUTION OF THE WEIGHT ON THE VEHICLE CARRYING THE CONTAINER.

INFORMATION DEVELOPED FROM THESE WEIGH-IN DEMONSTRATIONS, FROM OUR COMMERCIAL CONTACTS AND OUR EXPERIENCE IN THE INDUSTRY, LEADS US TO PRESENT THE FOLLOWING COMMENTS ON THE PROBLEM:

0 THE PROBLEM IS UNIVERSAL, LIKELY TO BE PRESENT AT EVERY PORT OR INLAND TERMINAL WHERE INTERMODAL CONTAINERS ARE HANDLED.

- THE U.S. NEEDS TO SET NATIONAL GOALS FOR UNIFORM WEIGHT STANDARDS; A SUBSTANTIAL INVESTMENT WILL EVENTUALLY BE REQUIRED BY BOTH THE PUBLIC AND PRIVATE SECTORS, AND BOTH SHOULD REASONABLY EXPECT TO KNOW WHAT STANDARDS THEY WILL HAVE TO COMPLY WITH FOR MANY YEARS IN THE FUTURE.

- THE U.S. NEEDS TO WORK TOWARD UNIFORM INTERNATIONAL STANDARDS TO FACILITATE THE MOVEMENT OF CARGO IN INTERNATIONAL COMMERCE.

- IN ALL CASES, LOCAL JURISDICTIONS MUST BE GIVEN FLEXIBILITY TO ESTABLISH MORE RESTRICTIVE STANDARDS. THIS IS PARTICULARLY IMPORTANT WHERE EXISTING INFRASTRUCTURE IN SPECIFIC AREAS CANNOT REALISTICALLY ACCOMMODATE LARGE OR HEAVY CONTAINERS WITHOUT EXTENSIVE RECONSTRUCTION.

  ON THE OTHER HAND, IF IT BECOMES NATIONAL POLICY TO ENCOURAGE THE CONFORMANCE WITH A UNIFORM NATIONAL STANDARD, THEN FEDERAL FINANCIAL PARTICIPATION MUST BE ANTICIPATED IN THE UPGRADING OF LOCAL INFRASTRUCTURE IN ALL AREAS OF THE COUNTRY TO ACCOMMODATE SUCH A STANDARD.

- LOCAL JURISDICTIONS SHOULD BE PROHIBITED FROM OFFERING READILY-OBTAINABLE PERMITS OR OTHER ARRANGEMENTS WHICH ENCOURAGE OVERLOADED CONTAINERS ON FEDERAL-AID HIGHWAYS. PERMISSIVE ARRANGEMENTS FOR THE SOLE PURPOSE OF DEVELOPING A SHORT-TERM ECONOMIC COMPETITIVE ADVANTAGE MUST BE PROHIBITED. IT IS NOTEWORTHY, THAT CONTAINERS FREQUENTLY MOVE BY RAIL OR TRUCK, BETWEEN PERMISSIVE JURISDICTIONS TO OTHER LOCALITIES WHERE THEY ARE ILLEGAL OVERWEIGHT UNITS. THERE, THEY WEAR DOWN THE INFRASTRUCTURE WITHOUT PERMISSION OR RECOMPENSE.

- RESPONSIBILITY MUST BE SHARED BY EVERYONE IN THE DISTRIBUTION/TRANSPORTATION CHAIN INCLUDING BUT NOT LIMITED TO: SHIPPERS AND RECEIVERS, STEAMSHIP OPERATORS, TERMINAL OPERATORS, MOTOR CARRIERS, CHASSIS LESSORS, EQUIPMENT MAINTENANCE ORGANIZATIONS, REGULATORY BODIES AND ENFORCEMENT AGENCIES. A SHIPPER SHOULD BE RESPONSIBLE FOR DECLARING THE ACCURATE WEIGHT FOR EVERY CONTAINER. EQUIPMENT PROVIDERS SHOULD MAKE THE RIGHT UNIT AVAILABLE FOR THE LOAD TO BE TRANSPORTED; THE TRUCKER MUST TRANSPORT ONLY LEGAL LOADS; AND REGULATORS AND ENFORCERS SHOULD ESTABLISH UNIVERSALLY APPLIED REGULATIONS WHICH ARE APPLIED IN THE SAME WAY AT EVERY LOCALE. UNIFORM AND COMPREHENSIVE ENFORCEMENT BY REGULATORS AND LAW ENFORCEMENT OFFICIALS IS A SINE QUA NON TO THE SUCCESS OF ANY POLICY.

O ACCOUNTABILITY MUST BE FIXED, AND ECONOMIC PENALTIES MUST BE DEVELOPED TO MAKE IT UNPROFITABLE, NOT JUST INCONVENIENT, FOR THOSE WHO KNOWINGLY SHIP OR TRANSPORT ILLEGAL OVERLOADED UNITS. FOR EXAMPLE, CONTAINERS NOT BEARING AN ACCURATE STATEMENT OF WEIGHT WOULD NOT BE ALLOWED TO MOVE OUT OF A MARINE TERMINAL UNTIL THEY ARE PARTIALLY UNLOADED AND MADE LEGAL FOR TRANSPORT. THE SHIPPER WOULD HAVE TO PAY THE COST OF RELOADING AND ADDITIONAL TRUCKING, IN ADDITION TO ANY FINE IMPOSED IN THIS REGARD. EXPENSIVE ECONOMIC SANCTIONS, BACKED BY STRONG ENFORCEMENT, WILL DO MORE THAN JUST FINES TO CORRECT THE PROBLEM.

O SAFETY AND PRESERVATION OF OUR INFRASTRUCTURE HAS TO BE THE PRIMARY MOTIVATING FACTOR BEHIND ANY NEW REGULATIONS, AND UNDER NO CIRCUMSTANCES MAY SAFETY BE COMPROMISED TO ACHIEVE LOCAL SHORT-TERM COMMERCIAL GAINS. SOME STATES WHICH CURRENTLY GRANT OVERWEIGHT PERMITS FOR MARINE CONTAINERS, FOR EXAMPLE, ALLOW NOT ONLY A HIGHER OVERALL GROSS WEIGHT, BUT ALSO HIGHER LIMITS ON AXLES. THIS MAY CREATE A SAFETY PROBLEM DEPENDING ON THE TYPE OF TIRE USED ON THE STEAMSHIP CHASSIS.

A CASUAL INSPECTION IN A TYPICAL CONTAINER YARD WILL SHOW THAT MANY 12-PLY TIRES IN USE TODAY ARE RATED BY THE MANUFACTURER AT A MAXIMUM OF 4,760 POUNDS EACH (IN DUAL CONFIGURATION). THIS MEANS THAT A STANDARD "TANDEM" CHASSIS, WHICH CONSISTS OF TWO AXLES WITH FOUR TIRES EACH, HAS A TOTAL TIRE WEIGHT-BEARING CAPACITY OF 8 X 4760, OR 38,080 POUNDS. YET, WHILE THE BRIDGE FORMULA RESTRICTS MAXIMUM WEIGHT ON A 40-FOOT CHASSIS TO 34,000 POUNDS ON A TANDEM AXLE, SOME OVERWEIGHT PERMITS ALLOW UP TO 40,000 POUNDS. THIS CLEARLY EXCEEDS MANUFACTURERS' SPECS ON MANY TIRES IN COMMON USE TODAY.

O REGULATIONS MUST BE UNIFORM, REALISTIC AND ENFORCEABLE. IN OTHER WORDS, RULES CANNOT BE SO STRICT AS TO SERIOUSLY INTERFERE OR IMPAIR INTERNATIONAL OR INTERSTATE COMMERCE. COMMERCIAL REALITY MUST BE RECOGNIZED, AND REGULATIONS MUST TAKE SPECIAL CIRCUMSTANCES INTO ACCOUNT. FOR EXAMPLE, A PERMIT SYSTEM HAS LONG EXISTED TO FACILITATE MOVEMENT OF EXCEPTIONAL SHIPMENTS, SUCH AS LARGE AND HEAVY PIECES OF MACHINERY. THESE PERMITS ARE NOT FREE, AND OFTEN REQUIRE SPECIAL CONSIDERATION SUCH AS "WIDE LOAD" SIGNS OR PILOT VEHICLES. THIS TYPE OF SHIPMENT MUST BE PERMITTED ON A CASE-BY-CASE BASIS. HOWEVER, THIS IS A MUCH DIFFERENT SITUATION THAN ALLOWING AN OVERLOADED INTERMODAL CONTAINER, WHICH COULD HAVE BEEN LOADED DIFFERENTLY TO BEGIN WITH, TO MOVE OVER THE NATION'S HIGHWAYS AT A RISK OF SAFETY AND A COST OF DETERIORATING INFRASTRUCTURE.

A UNIFORM NATIONAL STANDARD SHOULD BE ESTABLISHED WHILE REALISTICALLY RECOGNIZING THE ABILITY OF THE INFRASTRUCTURE IN ALL AREAS OF THE COUNTRY TO ACCOMMODATE IT. ONLY THEN WILL WE HAVE A TRULY INTERSTATE TRANSPORTATION SYSTEM.

THE COMMERCIAL ACTIVITIES OF PEOPLE NOW EXTEND FAR BEYOND OUR STATE AND NATIONAL BORDERS AND IT IS A TRUISM TO SAY OUR WORLD HAS GOTTEN SMALLER. WE MUST REVIEW AND REVISE OUR ATTITUDE AND REGULATIONS OF INTERMODAL TRANSPORTATION RECOGNIZING THAT WE ARE BUT ONE PARTICIPANT IN A VAST INTERNATIONAL TRANSPORTATION NETWORK WHICH, IN THE FUTURE, WILL WORK FOR THE ECONOMIC AND FINANCIAL BENEFIT OF ALL. THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY WILL CONTINUE IN ITS COMMITMENT TO PROTECT THE COMMERCIAL INTERESTS OF THE REGION WE REPRESENT AND WILL CONTINUE TO WORK REGIONALLY, NATIONALLY AND INTERNATIONALLY TO FOSTER THE ADAPTION AND IMPLEMENTATION OF UNIFORM POLICIES AND REGULATIONS FOR THE SAFE TRANSPORTATION OF INTERMODAL CONTAINERS.

# INVESTIGATIONS AND OVERSIGHT SUBCOMMITTEE
# COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
# UNITED STATES HOUSE OF REPRESENTATIVES

## Hearings on Intermodal Movements of Overweight Containers

## STATEMENT OF RONALD B. GOTTSHALL, MANAGING DIRECTOR, TRANSPACIFIC WESTBOUND RATE AGREEMENT

My name is Ronald B. Gottshall. I am the Managing Director of Transpacific Westbound Rate Agreement or TWRA. TWRA, whose headquarters are in San Francisco, California, is a rate-making association of 10 major transpacific containership carriers operating under an agreement filed with the Federal Maritime Commission (FMC) in the export trade from the United States and Canada to Asia. TWRA has taken active steps and supported the steps of others to find realistic and effective solutions to the overloaded marine container problem. To date these steps have met with only limited success.

I appreciate the invitation to comment concerning the problem of overloaded marine containers moving on US highways. Speaking from 35 years of personal experience in the ocean, motor carrier and rail industries and based on studies I have made and will discuss, I am convinced that the following points are correct, are basic and are essential to recognize in forging solutions to the problem:

. . . The overloaded marine container problem is a serious one of large proportions. Attempts by certain interests to minimize the scope and seriousness of this problem so as to avoid effective solutions do a real disservice to the country.

. . . The overloaded marine container problem is one requiring a federal solution or solutions and reasonable uniformity on a national and, in the long term, on an international basis through international/intergovernmental organizations;

. . . The overloaded marine container problem is heavily concentrated on a relatively few commodity groups involving large quantities of cargo;

. . . The overloaded marine container problem primarily involves US export traffic (by a factor of about 2:1) and hence it largely involves the loading practices of US export interests which are within the reach of US jurisdiction.

. . . The overloaded marine container problem exists in large measure because there are substantial economic incentives with few economic disincentives for the cargo shippers who actually load the containers to load them to maximum cubic capacity;

. . . The transportation costs saved by cargo interests through overloading are achieved:

(a) at the expense of competing cargo shippers who, in obeying the law, experience a relative competitive disadvantage in transportation costs in marketing their products and,

(b) at the expense of society as a whole which must bear the highway damage and casualty costs.

. . . The overloaded marine container problem is one whose solution must include removal of present economic incentives to overload plus imposition of penalty disincentives in a manner that focuses on the cargo interests who make the container loading decisions that create the problem in the first place.

Background

My entire professional life has been spent in the surface transportation industry. A very substantial portion of those many years has involved dealing with intermodal movements of containerized international traffic. I have been Managing Director of TWRA since 1985. Prior to that I was employed for 23 years in a variety of positions with Sea Land Service, a major US intermodal ocean carrier, including 11 years in charge of Sea Land's transpacific pricing. Before that, I worked for both railroads and motor carriers. A significant portion of my professional experience has focused on inland transportation of intermodal cargo moving in marine containers. My comments here reflect that personal experience.

I would like, as a preliminary point, to address one comment to those who seek to discredit the overweight container study performed by the Federal Highway Administration by trivial criticisms. If the study had never been performed and I was asked what commodities, based on my experience, were most likely to overweigh containers in international trade, I would have picked at least 8 of the 10 selected by the FHA. Moreover, anyone else knowledgeable in ocean or motor carrier transportation would probably make the same choices. Experience and anecdotes will not corroborate the basic conclusions of the FHA Study -- but hard evidence will. For that reason, I prepared my own studies using the same data source, but a different methodology and sampling technique which will be discussed later. It supports the fact that the problem we are addressing here is a real and sizeable one that will not go away on its own.

The Problem.

In its essence the problem is simple. Marine containers in use today are designed to carry both dense and volume commodities depending on trade needs. The containers in most common use today for carrying non-refrigerated cargo are as follows:

| Length | Width | Height | Avg. Cubic Capacity |
|---|---|---|---|
| 20′ | 8′ | 8′6" | 1170 |
| 40′ | 8′ | 8′6" | 2400 |
| 40′ | 8′ | 9′6" | 2700 |
| 45′ | 8′ | 9′6" | 3050 |

In the case of high density commodities, such as resins, lumber, hay cubes, paper and certain chemicals, loading to less than 50 percent of cubic capacity can easily cause a container together with its chassis and tractor to exceed lawful U. S. highway limits for gross weight and/or axle weight limits. If, as is often the case, the ocean carrier's charges are stated on a "per container" basis rather than on a "per weight ton" basis, shippers of dense commodities can save ocean freight dollars or negate the effects of a rate increase by loading more cargo in the container. For example, a shipper who customarily loads 21 metric tons (46296 pounds) in a 40′ container, the borderline for legal loading in most states, can negate a 5 percent rate increase simply by loading an additional 2314 pounds.

In addition, the cargo shipper who overloads is rewarded in a relative sense in that he obtains a transportation cost advantage over his law abiding competitor. The shipper may also save a certain amount of inland freight cost, if the cargo shipper rather than the ocean carrier pays for the motor carrier move, since motor carriers charge truckload rates which are the inland equivalent of marine "per container" rates. However, achieving cost savings by overloading virtually guarantees that the container will exceed legal limits.

Virtually all full container movements of high density, products -- the core of the problem here -- involve containers loaded by cargo shippers or by persons they control. Thus the decision whether to overload is one that is made by cargo shippers, commonly at their own premises at which an empty container has been delivered for loading.

Whether a particular container will violate highway weight limits depends, of course, not only on the weight of the loaded container, but on the type of equipment used to haul it and on local law variations. A "standard 40′ container" may have an empty weight of 6150 to 9300 pounds depending on whether it is manufactured with aluminum or steel; a "standard 40' chassis" may weigh anywhere from 6500 to 8500 pounds; and the tractor may weigh between 15000 and 19000 pounds depending on whether its a two or three axle model and how much fuel it is carrying. Despite the variables in combinations of equipment used, most regular cargo shippers understand them and know how to load properly to comply with applicable road laws. Quibbles over how an "overweight" container should be defined are largely designed to deflect attention from the problem rather than to solve it.

Based on equipment that is available and the generality of U. S. highway weight limits it is my judgment and the judgment of others having expertise in this area that it is fair to treat a twenty foot container loaded in excess of 38000 pounds and a forty foot container in excess of 46000 pounds as an "overweight" or "overloaded" container. These weights may even be less if steel containers, heavy chassis, the wrong type of tractor is used or state laws, such as those in California, govern.

At this point, I believe it would be appropriate to comment on those who would propose to resolve the "overweight problem" through the use of "special" chassis. These may either be expandable units with two or three axle for carrying 20' container on a longer bed and thereby increasing the allowable weight per axle or three axle chassis for 40' containers to increase the axle weight limits. These chassis are not only expensive to acquire and maintain but they are in addition to the vast conventional chassis fleet already owned or controlled by ocean carriers and motor carriers sufficient to meet trade needs. More important, special chassis don't solve problems -- they only transfer them. A good example of this is an intermodal move of an overweight container from say, Albany, NY to Yokohama, Japan. A trucker using a special chassis brings the container to the rail yard in the New York Harbor area. It is loaded on a "double stack" train (assuming the load can be safely carried on the rail car) and carried to the Los Angeles rail yard. There the container is tendered to a motor carrier for transport over local streets or highways to the ocean carrier's terminal for loading to a vessel. It is probable that during this segment of the trip a special chassis was not used either due to unavailability or the production required to unload a train and move the 200 or more containers to the ship in time for the sailing. Unfortunately, this is not the end of the problem -- many Asian countries have road laws which prevent the movement of overweight containers inland requiring the ocean carrier to bear the expense of partially unloading the container and transferring cargo to an additional container prior to delivery. Also, while most overweight containers can normally be lifted by shoreside port cranes, that is not always the case where "self-sustaining" feeder vessels are used. These ships utilize their own cranes which generally have a much lower lifting capacity.

As I have stated before, the average shipper in international trade knows or should know the weight of the cargo it stuffs into marine containers. The motor carrier ordinarily does not have this data or have any effective or practical means of dealing with the problem if it does have the data. A motor carrier is simply dispatched to pick-up a loaded container and take it to a marine terminal shortly before a vessel's sailing date. When the motor carrier arrives at the cargo shipper's premises to pick up a loaded container, even assuming that the driver knows or suspects that the shipment is overweight it is not realistic to expect drivers or the small "owner-operators" who usually handle this cargo to refuse the load. Doing so creates an immediate loss of revenue, time, fuel and equipment cost, the probable loss of the account and the potential for claims for missing the vessel sailing.

The ocean carrier is not in an effective position to deal with this problem either. Once the cargo arrives at the ocean terminal the illegal highway move has already occurred. Anyone who has observed conditions in marine terminals, when massive numbers of containers arrive in a short space of time to meet a vessel sailing, would realize the impracticality of large scale weighing or devanning of overloaded containers at the marine terminal. If the cargo is simply rejected it will produce yet another overweight highway move back to the cargo shipper or its agent.

## The Scope of the Problem.

A Federal Highway Administration study concluded that there are probably in excess of a million overloaded container movements per year in the United States. It also identifies specific commodity groups that constitute a disproportionately large portion of the total and shows that export trades constitute the major part of the problem. That study concluded that 17 percent of 40 foot and 3 percent of 20-foot overweight containers were likely to be more than 10,000 pounds overweight.

The Federal Highway Administration Study has been questioned and attacked by persons having an economic interest in resisting any effective solution to the problem. These objections are, in my view, a case of "going for the capillary". Day-to-day ocean carrier, motor carrier and my own experience confirm that the basic conclusions of the Study are on target.

I have examined available data concerning US Liner exports to the Far East in the TWRA trade. The TWRA trade is the major US export trade amounting to about 61 percent of total US exports by weight (Appendix A). TWRA members handle about 68 percent of that amount or about 42 percent of all U. S. exports by weight.

Rather than sample each month as the FHA study did, I took the complete months of August 1989 and April 1990 as reported by the Journal of Commerce PIERS data base. From this data it was possible to determine the total container shipments which, if they moved over the road, as most do, were highly likely to have involved illegal moves. My study is set forth in Appendix B to this statement.

To take only cargo moving to Asia from Pacific Northwest ports during the single month of August 1989 , the data indicates that 7,177 40 foot containers over 46,000 pounds and 3,955 20 foot containers over 38,000 pounds moved. The rationale for these loading thresholds is based on the loading limits which most likely can be obtained using an average equipment mix -- container, chassis, and tractor -- and still meet the road laws of most states.

Nearly 36 percent of all 40 foot containers in this trade lane in this month weighed over 46,000 pounds and over 68 percent of 20 foot containers weighed over 38,000 pounds. At the extreme end of the overweight spectrum, in the Pacific Northwest trade lane alone in a single month 889 20 foot containers moved weighing in excess of 44,000 pounds and 578 40 foot containers weighing in excess of 52,000 pounds. It is extremely interesting to note that the same study for the month of April 1990 produced almost exactly the same results.

For the US export trade to Asia from all coasts the totals for 40′ containers in August 1989 and April 1990 were 77,434 and 76,327, respectively. Of these, 29.5 percent were overweight in August and 30.8 percent in April. The 20′ totals were 25,424 in August and 20,940 in April. Despite the drop in the number of 20′ containers, the percent of overweight containers remained almost constant -- 48.3 in August and 47.9 in April. A recap of all coasts is contained in Appendix C. In my opinion, the TWRA study clearly validates the conclusions reached by the FHA. Even though our sample is smaller than the total U. S. trade, it does cover more than 61 percent of all exports and the number of days sampled is more than twice as much as the FHA study. Moreover, because it was done in a very recent timeframe it shows that the problem is not going away -- indeed it seems to be growing!

By far the largest part of the overloaded marine container problem consists of shipments falling within a small number of commodity groups. In the TWRA export trade to Asia via the Pacific Northwest, ten commodity groups constituted the overwhelming majority of containers weighing in excess of 46,000 pounds, in the case of 40 foot containers, and in excess of 38,000 pounds in the case of 20 foot containers. The number of firms shipping these commodities is limited. I estimate that less than 300 firms exporting in the total TWRA trade ship these high density commodities that account for about 80 percent of the overloaded commodities in the trade.

## Present Solutions Inadequate and Misdirected.

Current enforcement fails to focus upon the cargo interests which create the problem and which are in the best position to control it. Current enforcement which centers on motor carriers and on penalizing them on an ad hoc basis is misdirected. These penalties create a substantial hardship for small business enterprises which, ironically, are in a poor position to do anything about alleviating the problem except to avoid being caught. The motor carrier is often in a poor position to pass on these penalties to the cargo interests who stuff containers in export trades and are the persons really in a position to control the problem. Similarly in the event of liability resulting from casualties due to traffic accidents caused by weight, it is usually the motor carrier who bears the brunt of the cost.

Solutions.

The following solutions deserve consideration:

1. Remove the single greatest economic incentive for cargo interests to overload containers: ban per container ocean rates or the use of per container rates for high density cargoes. Ocean rates traditionally have been stated on the basis of weight or measurement, whichever produced the greatest revenue for the carrier. These rates intrinsically create no incentive for overloading, other than by misdeclarations of weight by cargo shippers. However, large penalties exist under the Shipping Act of 1984 for such misdeclarations, and such misdeclarations can be controlled by spot checks and existing and fully adequate penalties under the Shipping Act.

In recent years "per container" ocean and intermodal rates have been introduced. These rates have the side effect of creating an economic incentive for cargo interests to put as much cargo into a container as it will hold. If the ocean rate is $2000 per container, improperly adding five extra tons of cargo, as sometimes occurs, results in an ocean freight cost reduction from about $100 per ton to about $80 per ton. As a consequence the law abiding cargo shipper is disadvantaged economically as compared to competing cargo shippers who cheat. Thus, the message to cargo shippers conveyed at present is that overloading containers to unlawful levels is rewarded while complying with the law is punished by placing shippers who ship legal loads at a competitive cost disadvantage.

Shrill cries from shippers who claim to need "per container" rates to export have no basis in the commercial market place. In all my experience in the transportation industry, I have yet to see any commodity sold on a "per container" basis. Instead more common units of sale are used such as "per pound", "per kilogram", "carton", "per ton", etc. All of these are easily converted to a weight or volume basis to precisely determine the actual cost of transportation. The same can't be said for "per container" rates in which the unit cost will vary according to the quantity loaded in the container.

A centerpiece of any practical solution to the problem should be either a prohibition of per container ocean rates (or their equivalent). If that is too blunt an instrument, per container rates should be prohibited as to commodity groups that are determined by an appropriate agency to be high density commodities. That latter approach is one which TWRA proposed to the Federal Maritime Commission and which the FMC decided not to become involved in.

2. Adopt a Uniform Federal Standard Setting a Maximum Load for Each Size of Marine Container If that Container is to Move On U. S. Highways. Under this approach cargo shippers would have clear and unambiguous upper limits to work with when they load containers. My suggestion for dry cargo containers would be a

maximum for a 20 foot container: 38000 pounds; for a 40 foot container: 45000 pounds; for a 45 foot container 45000 pounds. For refrigerated cargo containers (which weigh significantly more than dry containers): 35000 pounds for 20′ containers and 42000 pounds for 40′ and 45′ containers.

3. Press to have an international, inter-governmental organizations, such as IMCO, adopt a uniform international standard for maximum loaded weights for marine containers, consistent with U. S. objectives. Japan, Taiwan and Korea all have road laws similar to the U. S. with Japan being the strictest. Enforcement is, however, sporadic. This is probably due to the same conflicts that exist in the U. S. -- local versus national laws and how to treat the problems caused by containers in international trade. In the long term, this may ultimately be the best solution because it would set international standards and avoid questions of comity between trading partners.

4. Focus Penalties, Where Possible, On the Interests Performing the Overloading. Imposition of penalties, tailored to overweight marine containers, should have objectives and applications consistent with elimination of economic incentives, as in suggestion 1 above. Penalties should serve to reverse the economics that are causing the problem in the first place. Penalties should be imposed on cargo interests responsible for overloading containers rather than simply on motor carriers, (or for that matter on ocean carriers,) who have very little practical ability to control the problem. Export trades

constitute approximately 65 percent of the overloaded marine container problem. Thus the principal persons who are overloading export containers and benefitting therefrom are within U. S. jurisdiction. The Committee may want to consider proposing legislation, specific to marine containers which:

(1) Imposes penalties on the cargo interests shipping the product and who are responsible for overloading containers;

(2) Adopts a national weight standard for each container size or directs an appropriate agency to set such standard. Such standard, applicable to persons loading the containers, would be a simple maximum weight standard and it would not be dependent on the configuration of the motor carrier equipment.

(3) Requires that all motor carriers transporting marine containers be furnished by the cargo shipper with a certificate identifying the entity which loaded the container and identifying the shipper.

5. Seek to have other governments create similar standards and penalties. In import trades the U. S. penalty solution has shortcomings because the persons loading the cargo are often not reachable in the U. S. Fortunately, import trades constitute a smaller part of the total problem and a relative handful of commodities. However, if penalties now imposed on motor carriers were to be imposed on U. S. consignees of that cargo, there would be an economic incentive for those consignees to instruct their foreign suppliers not to overload marine containers.

The approach I have suggested above uses a combination of economic incentives and disincentives focused on those who can most easily solve the problem. The elimination of per container rates would cost the government next to nothing, and establishment of clear and simple weight limit standards for cargo shippers coupled with attendant penalties would be an efficient, cost-effective way of dealing with the enforcement side of the problem. We would be pleased to assist in drafting legislation to accomplish these suggestions if that is the Committee's wish.

FMC Petition.

The Committee may be aware that TWRA petitioned the Federal Maritime Commission to eliminate "per container" rates as to those high density commodities constituting the major problem. The FMC declined this petition on several grounds. Basically the FMC, although recognizing its jurisdiction to act, declined to interject itself into an enforcement area involving other federal and state agencies. Yet no other agency has the power to control "per container" incentives to overloading. If some or all per container rates are to be eliminated -- as I strongly recommend -- either the FMC must be directed by statute to do so or some other agency should be given the requisite power and direction.

Other reasons given by the FMC for denying the TWRA petition consisted essentially of mischaracterizations of the TWRA petition as claiming that ocean per container rates constitute the "only" incentive for overloading (FMC Order at 21, 23) and that the Federal Highway Administration Study cited in the Petition was conceptually flawed. I note, however, that TWRA consistently stressed that elimination of per container rate incentives was but one significant part of a solution and never claimed that per container rates were the "only" incentive for overloading. Further, the FMC's claims of conceptual flaws in the Study can hardly be a basis for concluding that the Study's conclusions were incorrect or that there is no real problem. The point which the FMC missed, or chose to miss, is that, as all knowledgeable motor and ocean carrier personnel know: (1) with or without the Federal Highway Administration Study a major problem of overloaded containers clearly exists and (2) that per container ocean pricing constitutes a major economic incentive for cargo interests to engage in overloading. No other significant economic incentive has been identified.

## Conclusion

I wish to thank the Committee for the opportunity to express my views and those of the TWRA on this vital transportation issue. I fully recognize that the problem of overweight equipment on the nation's highways concerns both domestic and international movements in all types of motor carrier equipment and marine containers. Just how big the problem is has not been precisely defined and likely never will be, considering the conflict between local, state and federal weight laws. Regardless of a proper definition, all of the transportation interests I've talked to consider it to be a significant problem.

Marine containers are probably a small portion of the overall number of total movements, but highly visible because of (a) the large percentage of overweight containers and (b) the domestic portion of the international journey of those containers originate at or are destined to urban areas where enforcement is at its highest. A long time ago, I learned that "massive problems" are usually not solved by "massive solutions" -- instead, problems are best solved a piece at a time until the remaining portions reach a manageable level. That's what should be done for the overweight marine container issue.

## TESTIMONY OF RALPH W. KREUGER, ON BEHALF OF SOUTH EUROPE/USA FREIGHT CONFERENCE BEFORE THE INVESTIGATIONS AND OVERSIGHT SUBCOMMITTEE OF THE UNITED STATES HOUSE OF REPRESENTATIVES COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

### Introduction

My name is Ralph W. Kreuger. I am Senior Vice President of Lykes Bros. Steamship Co., Inc. Lykes is a United States flag ocean carrier based in New Orleans, Louisiana. I am testifying today on behalf of the South Europe/USA Freight Conference ("SEUSA"), a steamship conference formed pursuant to the Shipping Act of 1984. In addition to Lykes, SEUSA's membership includes 15 other ocean common carriers. SEUSA serves the trade from the Mediterranean to the United States. Its members, however, include carriers -- both U.S. and foreign flag -- which are active in virtually every U.S. trade of consequence. (A list of the SEUSA members is annexed hereto as Attachment I.)

The members of SEUSA are concerned about the safety hazards and economic disruptions caused by the transport of overweight ocean freight containers in interstate and foreign commerce on our nation's highways. The transportation of overweight containers on the nation's highways presents a threat to the lives and property of all those on or adjacent to these highways, and causes excessive wear and tear on the bridges and highways which comprise a vital part of our country's infrastructure. There is no uniformly enforced federal regulation in this area. Indeed, the Federal Maritime Commission, the agency that regulates ocean transportation of cargo, recently decided not to address the issue when petitioned to do so by SEUSA and others. As a result, ocean carriers and their customers are subject to a confusing array of state laws and regulations on the subject.

The issue before you today is whether Congress should take action to address these problems. SEUSA's member lines believe that Congress should step in to regulate in this area by adopting comprehensive legislation preempting varying state laws and imposing clear, nationwide standards on the road transport of ocean freight containers.

## I.. The Background And Scope of the Problem

### A. Intermodal Transportation of Containers on U.S. Highways

A high percentage of the cargo carried by SEUSA's member lines, like other carriers that operate in the United States foreign trades, is packed in containers. These containers, which are similar to truck trailers, come in standard lengths of 20 feet and 40 feet and are generally loaded directly by the ocean carrier's customer, the shipper of the goods, at its place of business. One of the greatest values of containerized cargo (containerization has been referred to as a "revolution" in ocean shipping over the past 30 years) is that the containers may be loaded once at the shipper's place of business, taken by truck or rail to the port, and placed directly on a ship without having to unload each item of cargo and repack it onto the ship. The container can then be unloaded at the destination port and taken to an inland destination point, again without having to be unpacked.

Cargo transported in the SEUSA trade, as well as a large portion of cargo worldwide, is transported in "intermodal" movements, i.e., transportation of containerized cargo in the same container by different modes of transportation. These containers are not stuffed or stripped at ports. Rather, the cargo is packed once at the origin point and unpacked from the container only at the ultimate destination point. Thus, the ocean carrier no longer controls the loading of individual cargo items onto the ship or, in the case of an intermodal move, onto a truck.

### B. The Problem of Overweight Containers

It has become apparent that many ocean freight containers moving over our nation's highways today exceed applicable weight limits. Until recently, no one could provide any meaningful or reliable estimate on the number of such overweight containers. In March, 1989, however, a study entitled "Analysis of Port Import/Export Reporting Service (PIERS) Date To Reveal Potentially Overweight Container Movements On America's Highways" was published by the Transportation Studies Division, Office of Policy Development, Federal Highway Administration ("FHWA"). This study estimated that 40% of 20-foot containers moving in the U.S. import and export trades, 38.3% of the 40-foot containers in the export trades, and 17% of the 40-foot containers in the import trades were potentially overweight. Study at 7. The study further concluded that on the basis of the FHWA estimate, "there would have been a total of 1,070,479 potentially overweight 20 and 40-foot container movements during the one year period from October 1987 through September 1988." Id.

The FHWA study clearly demonstrates that overweight containers constitute a significant problem in interstate commerce in the United States. Overweight containers on the nation's highways are a problem for two main reasons. First, they can compromise safety. Overweight loads can increase the chance of a motor vehicle accident, and may make accidents worse when they do happen. Accidents, of course, carry with them the attendant human and monetary costs of injury and property damage. These costs are usually passed on to the ultimate consumers of the services through increased transportation and insurance costs.

Second, overweight containers, and the resulting overweight loads, cause undue wear and tear on our already decaying highways and bridges. This wear and tear in turn exacerbates potential safety problems. As noted in the FHWA study:

> When these containers are loaded with cargoes at weights which cause the highway vehicles transporting them to exceed Federal, State or local vehicle weights limits, there is increased damage to highway pavements and

> bridges, the potential for impaired vehicle performance resulting in safety problems, and citations being issued to the driver of the overweight vehicle.

Study at 1. See also H. Conf. Rep. No. 100-27 (100th Cong. 1st Sess. 1987), reprinted in 1987 U.S. Code Cong. and Adm. News 121, 145 ("The bridge formula [23 U.S.C. §127] prescribes limitations on axle loadings to prevent undue concentration of weight within overall gross vehicle weight limitations, thus preventing harm to bridges on the Interstate System").

## II. The Current Patchwork of Federal and State Statutory and Regulatory Schemes Does Not Adequately Address the Problems Caused by the Shipment of Overweight Containers

The transport of containers in interstate and foreign commerce is presently governed on the federal level by the so-called "bridge formula," which sets limits on the weight which can be carried by each axle of a truck, as well as on the total gross weight of the vehicle itself. Vehicles are limited to a gross weight of 12,000 pounds on any steering axle, 20,000 pounds on any other single axle, 34,000 pounds on a tandem axle, 42,000 pounds on a triple axle configuration, and a total gross weight of 80,000 pounds for the entire vehicle.

The bridge formula is ineffective as a regulatory scheme primarily because it does not pre-empt concurrent state and local regulation of container weight. Thus, states and localities can (and do) mandate weight limits that differ from the federal requirements. This, of course, has the effect of creating yet another layer of regulation with which shippers and carriers must deal when planning the transportation of their cargo.

In addition, states may permit transportation of containers that exceed federal limits for "loads which cannot be easily dismantled or divided." However, each state defines this term differently and sets its own weight standards for such loads. Thus, under the present regulatory regime, a container which meets federal regulations and the regulations of one state may very well be in violation of the regulations of a neighboring state through which a shipment must pass. Conversely, the weight limitations applicable in one state may be more lenient than other state or federal regulations.

These multiple layers of inconsistent statutes and regulations result in a confusing logistical nightmare for shippers and carriers alike. Shippers worldwide are uncertain of how to load their cargo because they are uncertain which standards the container will have to meet. Indeed, the lack of a clear and unambiguous set of regulations results in shippers ignoring any requirements on container weights. Rightly or wrongly, shippers view the system as being so complicated and confused that compliance with any particular regulation is meaningless. Accordingly, they load the containers with whatever weight they choose.

As a result, carriers incur substantially increased administrative time and costs in planning transportation routes and in some cases must choose a circuitous route or juggle cargo in order to comply with the law of each state through which they will pass. The result of this tangle of regulation is delay, uncertainty, and increased administrative costs. All these costs ultimately fall on the consumers.

The variety of state regulations in this area was one reason the Federal Maritime Commission ("FMC"), which regulates the ocean transportation of containerized cargo in the foreign commerce of the United States, deferred any rulemaking proceeding to address the overweight container problem. In denying petitions by SEUSA and other organizations requesting it to begin a rulemaking proceeding on the issue, the Maritime Commission stated:

> Commission action on the instant Petitions, or, in fact, any FMC initiative to address these issues, would necessarily involve issues of federalism and could result in the Commission's preemption of the current statutory scheme apportioning rights and responsibilities in the area among local, state and federal governmental entities. The 'Bridge Formula' empowers the states and local jurisdictions to determine whether and when there are countervailing reasons for over-the-road movement of heavy loads to outweigh these presumed highway safety factors, by providing for special permits. States may issue permits to exceed the federal limits applicable to the interstate system if the load is deemed 'non-divisible.' In addition, the states may establish greater maximum weight limits for state highways than

> those applicable to the federal interstate system.
>
> Action by the Commission to establish maximum weights for containerloads would remove at least some of the flexibility Congress bestowed on state and local jurisdictions.

Petition No. P3-89; Petition No. P4-89, Order Denying Petitions (Served June 5, 1990).[1]

The Maritime Commission also declined intervention on the issue because of the multiple jurisdictions of the respective federal regulatory agencies. In its order, the FMC noted that the issue had been studied by the FHWA, which is the agency most closely concerned with highway safety and maintenance. At the same time, the FMC acknowledged that it has jurisdiction over the issue to the extent it might involve discriminatory rates or cargo classifications by ocean carriers. Thus, while both agencies have some regulatory jurisdiction over different aspects of the problem, a comprehensive approach must be taken.

A single national approach to this problem is particularly important because of the international nature of intermodal ocean transportation. While American companies may be able to cope with inconsistent state regulations, foreign companies, which inherently comprise a large portion of those shipping goods to the United States, often are not. Therefore, in many cases they are either unable or unwilling to pack their containers to meet varying state regulations. In addition, such shippers are typically more disposed to pay attention to Congress or a federal agency such as the FHWA or the Federal Maritime Commission, with which they have some familiarity, than to a state regulatory agency.

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[1] Petition No. P3-89, filed by SEUSA, American Trucking Associations, and ATA Intermodal Council, sought a rulemaking to prescribe maximum container weights. Petition No. P4-89, filed by Transpacific Westbound Rate Agreement, American Trucking Associations, and ATA Intermodal Council, sought a rulemaking to eliminate certain "per container" rates, which they believed would reduce the problem of shippers packing containers beyond legal weight limits for commercial advantage.

## III. The Best Remedy for The Overweight Container Problem is Clear, Comprehensive Federal Legislation Which Preempts State Regulations and Creates Uniform Standards to be Applied Industry-Wide

The promulgation of regulations by one or more federal agencies under current law would do little to resolve the current confusion and lack of regulation. Ocean freight containers present special problems as they fall under the jurisdiction of different agencies at different stages of their journey from shipper to consignee. As the FMC order denying a rulemaking petition on this matter demonstrates, no single agency has a clear mandate of jurisdiction over this problem.

More importantly, agency action on the federal level would not address the problems created by the myriad of state standards currently in effect. Thus, the only way to address the lack of certainty and consistency in the current regulatory scheme is for Congress to pass clear, uniform standards which would clearly pre-empt the inconsistent state regulation in this area.

SEUSA believes the federal government should mandate maximum gross vehicular weights and, in appropriate cases, maximum weights for various trailer and container configurations. This could be done directly by Congress or by delegation to the FHWA with opportunity for the transportation industry to comment on the appropriate standards. However, if Congress delegates the setting of standards to the FHWA or any other agency, it should clearly delineate that agency's responsibilities and charge that agency to accomplish specific tasks within its area of responsibility. In addition, Congress should set firm time limits for the completion of those tasks to ensure prompt action.

Congress should also mandate penalties, or empower the appropriate administrative agency to impose penalties, for tendering shipments in violation of the uniform federal weight standards. Those penalties should be directed toward the cargo interests that are typically responsible for loading the cargo. As noted above, most containers are loaded by shippers away from the port and the individual cargo items are not usually unloaded by the ocean carrier. Thus, the ultimate responsibility for complying with applicable limits must fall on the shippers of goods.

SEUSA is prepared to work with Congress or an administrative agency to develop appropriate weight standards which would protect the public and our infrastructure, putting an end to confusion in the transportation industry. These standards could be revised as developments in transportation or highway technology evolve to allow trucks to carry heavier loads with greater safety. The Transportation Research Board's study of the Federal Bridge Formula should provide data which will be useful in formulating the types of standards which can address this problem.

It should be noted that technology is developing in such a way that vehicles can be reconfigured or weight can be redistributed to bring non-complying shipments into compliance with weight limitations. Any weight limitations adopted by Congress or by an administrative agency under Congress' direction should be flexible enough to accommodate and encourage new technology that allows greater weights to be carried safely.

## CONCLUSION

The dangers to life, property and our infrastructure caused by the transport of overweight shipments are real and serious. Unless Congress takes action to create a federal uniform weight standard which will preempt inconsistent state regulations, these dangers will continue to exist and possibly increase. The transportation industry has shown that without appropriate rules it is incapable of solving this U.S. transportation problem on its own. Likewise, federal agencies have not been able to meaningfully address the problem under current law. Only Congress, by definite action to preempt the ineffective and inconsistent regulatory weight schemes now in place, can effectively deal with this U.S. transportation problem.

## ATTACHMENT 1

## SOUTH EUROPE/U.S.A. FREIGHT CONFERENCE MEMBERS

Achille Lauro
Compagnie Generale Maritime
Compañia Trasatlantica Española, S.A.
Costa Container Lines, S.p.A.
D'Amico Societa di Navigazione, S.p.A.
Evergreen Marine Corporation (Taiwan) Ltd.
Farrell Lines, Inc.
"Italia" di Navigazione, S.p.A.
Jugolinija (Jugoslavenska Linijska Plovidba)
Jugooceanija (Jugoslavenska Oceanska Plovida)
Lykes Lines (Lykes Bros. Steamship Co., Ltd.)
A. P. Moller-Maersk Line
Nedlloyd Lines (Nedlloyd Lijnen B.V.)
Sea-Land Service, Inc.
P&O Containers (TFL) Ltd.
Zim Israel Navigation Company, Ltd.

# ROAD DAMAGE AND SAFETY EFFECTS OF TRUCKS CARRYING INTERMODAL CONTAINERS

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## THURSDAY, SEPTEMBER 13, 1990

House of Representatives,
Subcommittee on Investigations and Oversight,
Committee on Public Works and Transportation,
*Washington, DC.*

The subcommittee met, pursuant to call, at 9:30 a.m., in room 2253, Rayburn House Office Building, Hon. Glenn M. Anderson [chairman of the subcommittee] presiding.

Mr. Anderson. We will come to order.

This is the subcommittee's third day of hearings examining the use of intermodal containers, which, in the last 25 years, has had a major impact on the way cargo is handled in this country and all over the world.

Unfortunately, these containers can be loaded so heavily that when they are transferred by truck they can disrupt the flow of commerce and pose serious road damage and safety problems with their movements over our nation's bridges and highways.

Ironically, this so-called "overweight container" may only occur along 100 miles of a 10,000 journey, which includes legitimate movement of the heavy container on the ship, by the crane at the port and on the rail car it may be transferred to.

On this committee, we fully appreciate the importance of trucks in transporting intermodal containers to and from loading and unloading points and between marine and rail terminals. They are critical links in the movement of commerce to and from our ports.

However, we also understand the importance of preserving the structural integrity of our highway network, and this committee's vital mission of assuring the safe use of that network.

So, we cannot permit overweight container movements and the related damage to highway pavements and bridges and truck handling and braking to go unchecked.

At our previous hearings, we learned some disturbing news—there is no quantitative estimate of the damage caused by these overweight vehicles, and there are no plans to update the Federal Highway Administration's PIERS (Port Import/Export Reporting Service) study; which although criticized by some, is the best national estimate of potential overweight container movements available to date.

Today we continue our efforts to answer the difficult questions that remain with us:

How extensive is the problem?

How can these movements best be controlled?

What agency, if any, should bear the burden of controlling the movement and checking the weight?

What, if any, administrative, regulatory or legislative solutions are appropriate?

We must also ensure that any proposals for solutions to the problem take into consideration the inherent competitive aspects of containerized movements and their relationship among ports, states, regions, countries, modes of transportation and industries.

Today's witnesses include: Congresswoman Helen Delich Bentley from Maryland, representatives of the American Trucking Associations, the United Shipowners of America, the Steamship Operators Intermodal Committee and consultants specializing in the movement of containerized cargo.

We look forward to hearing their testimony on this very important matter.

The Chair now recognizes the gentlemen from Ohio, our Ranking Republican Member, Mr. McEwen.

Mr. McEWEN. Thank you very much, Mr. Chairman.

I will make my opening comments very brief, knowing our witnesses testifying today are anxious to begin before some unknown outside force storms the hearing room and forces yet another postponement of their appearances before the subcommittee.

Seriously, I am pleased that we meet today to conclude our series of hearings on the road damage and highway safety effects of overweight containers, and join you in welcoming the witnesses who are appearing.

The subcommittee sincerely appreciates their unfailing interest and accommodation of their schedules to our sometimes unpredictable agendas.

I extend particular welcome, Mr. Chairman, to our colleague, Helen Bentley, whose long interest in finding a solution to the problems caused by the movement of overweight shipping containers on the nation's highways probably predates that of many others who were here today.

I am certain that, whatever the ultimate resolution of the issue may be, we can count on Mrs. Bentley's active involvement, and I, for one, welcome her knowledgeable participation.

With that, Mr. Chairman, I will close, adding only that I again comment you for bringing this issue before the subcommittee, and look forward to working with you further as we seek to define and enact, if necessary, appropriate measures to deal with it.

Thank you, Mr. Chairman.

Mr. ANDERSON. Any other opening comments?

Mr. HAMMERSCHMIDT. Mr. Chairman, briefly, I want to thank you and our Ranking Republican Member Mr. McEwen for holding this hearing and thank Mrs. Bentley for appearing as a witness.

I know her long-time interest in this matter. The committee has benefited from her interest in it.

I want to emphasize one point and I hope we will not lose sight of it: as the testimony from these hearings demonstrates, there are ways in which heavyweight containers can, and do, move safely and legally in both international and domestic commerce.

As solutions to the problem are proposed, and if indeed legislation is appropriate, whatever action is taken should recognize and accommodate the economic benefits that accrue to American businesses from those types of shipments.

Mr. ANDERSON. If there are no further comments, we will recognize—Mr. Hastert, did you have a comment?

Mr. HASTERT. No.

Mr. ANDERSON. Mrs. Bentley?

### TESTIMONY OF HON. HELEN DELICH BENTLEY, A REPRESENTATIVE IN CONGRESS FROM MARYLAND

Mrs. BENTLEY. Mr. Chairman, I do appreciate this opportunity to testify before this distinguished subcommittee, and I do want to commend you and Mr. McEwen, the Ranking Minority Member, for your leadership in holding this and the two days of hearings in June to address the important safety issue of overweight containers.

I want to thank my other colleagues who are here this morning on this important issue.

At the outset, Mr. Chairman, I want to emphasize that while the the focus of attention is on those containers moving within the international trades, the problems posed by overweight containers also include domestic containers.

The overweight container issue is not a simple one. It is a complex issue that entails federal, state and local regulations governing the highway movements of containers.

With regard to international shipments, shippers have available a variety of modes of transportation to transport their goods. While ocean transportation is the common denominator, containers may also move to and from the port area via barge or rail, in addition to over the road movements.

This imposes another level of complexity in any effort to develop remedies for overweight containers.

While a container may be loaded in violation of U.S. highway gross weight limitations, the same container may be moved legally via barge or rail.

Additionally, an overweight container may be moved legally over U.S. highways with the utilization of specialized chassis equipment, which distributes the weight to bring it into compliance with the Bridge Formula, or it may move through a state's issuance of a waiver permit.

Mr. Chairman, while there is disagreement as to the extent of the problem posed by overweight containers, it is generally agreed that the Federal Highway Administration's study entitled, "Analysis of Port Import/Export Reporting Service (PIERS) Data to Reveal Potentially Overweight Container Movements on America's Highways," correctly identifies the types of commodities that are most frequently associated with heavy weight movements.

However widespread the practice of overweight shipments in containers may be, there is a corresponding lack of information on the extent of pavement damage that may result from overweight movements.

While the State of California estimates that $100 million in damages annually results from all overweight vehicles, it has made no attempt to break down those figures into the type of carriage involved—container on chassis, trailer, dump truck, cement truck and others.

I was hopeful that the testimony offered by the Transportation Department at your June hearing would have shed some light on the extent of damage overweight containers inflicts on our federally maintained highways and roads.

Mr. Chairman, I believe it would be prudent and helpful to this subcommittee if DOT were instructed to study the deterioration of our highways and bridges caused by overweight vehicles, especially the contributions of shipping containers.

Another safety area that needs to be addressed is the number of accidents caused by the inability of overweight container-laden trucks to stop properly. These statistics should also be available from the Transportation Department.

A third safety concern deals with our national railway system. It has been brought to my attention that containers improperly loaded or too heavily loaded with cargo have caused derailments when the container flooring fails, spilling the contents onto the road bed.

Mr. Chairman, developing a solution or solutions to this problem that will satisfy all segments of the transportation industry will not be an easy task, but it is important that we strive to overcome the obstacles before us.

Regardless of allegations of some shippers, who claim ocean carriers are using the overweight container issue to generate additional freight rate revenue, overweight containers are, without question, a serious highway safety problem.

Since there is disagreement as to the extent of the overweight container problem, I would suggest that the subcommittee consider legislation authorizing the Maritime Administration to conduct a one-year pilot program to demonstrate the feasibility of detecting overweight containers prior to transshipment over our highways.

The pilot program could be structured to conduct surveys at unannounced times at rotating, randomly selected ports throughout the country.

MARAD should solicit proposals to conduct this demonstration program from private contractors experienced in the inspection and weighing of ocean-going shipping containers.

Within six months of the completion of the pilot program, MARAD should submit a report to Congress on the magnitude of the overweight container problem, including an evaluation of the methods used to identify such containers.

During this pilot program, efforts should be increased by MARAD, the Department of Commerce, and the State Departments to educate shippers, both domestic and foreign, to the U.S. highway weight limitations.

Once Congress has a better understanding of the extent of the problem, legislation should be enacted directing the Federal Maritime Commission to promulgate regulations requiring that all tariffs governing ocean-going shipments to the United States shall include provisions imposing penalties on shippers who ship containers exceeding the lawful road weight in the U.S.

The legislative process will afford everyone concerned, federal, state and local agencies, truckers, ocean carriers, shippers and the public the opportunity to have their input in correcting this problem.

International container shipments to be moved across U.S. highways are readily identifiable. Arrangements for such movements, as well as rail and barge movements, are usually made well in advance of the container leaving the shipper's door.

With proper educational efforts, coupled with an FMC tariff requirement, overweight containers should be eradicated eventually from U.S. highways.

Shippers should be brought to bear the burden of highway weight limitation law violations, not American's truckers and certainly not American's motoring public.

Mr. Chairman, I want to thank you and the subcommittee, once again, for your efforts in addressing this problem and seeking a resolution.

Although I am a Member on leave from the full Public Works and Transportation Committee, my interest on committee activities continues. I want to pledge my continued support.

I stand ready to assist in those efforts in any way you deem appropriate.

Thank you, Mr. Chairman.

Mr. ANDERSON. Thank you, Ms. Bentley for your presentation.

A couple of questions.

The Federal Maritime Commission's testimony mentions that SEUSA and TWRA petitions were in one sense too narrow and in the other overly broad.

From your unique perspective as past chair of the FMC, do you think a petition could be carefully crafted that would allow the FMC to resolve the problem of overweight container movements?

Mrs. BENTLEY. Yes, I do, sir. When I was talking with the FMC last year, I told them this could be done.

There seemed to be a reluctance on their part to do it.

Mr. ANDERSON. Do you feel that other East Coast ports would cooperate if Baltimore were to take the lead in reducing overweight container movements?

Mrs. BENTLEY. That is one of the problems. We have to do this by rotating and random selection of the ports. Baltimore will cooperate, I know, but we will have to get other ports involved.

Baltimore doesn't want to be in a position of saying Baltimore is the one where all the bad cargo is moving through.

It will have to be done on a broad basis. I couldn't get them—a year or two ago said don't bring the investigators in here first. We will be spotlighted.

I think if we can show we are going to hit a number of ports, that wouldn't be a problem.

Mr. ANDERSON. I know in Southern California, Los Angeles, they like it pretty good.

Mrs. BENTLEY. We will get them. It has to be done in more than one port very definitely.

Mr. ANDERSON. Any further questions?

Mr. **McEwen**. No questions.

Mr. **Hammerschmidt**. Helen, you made four major suggestions that all make good sense involving DOT and the Maritime Administration and Congress.

As always, you just brought us a very good statement. I appreciate your suggestions.

Mrs. **Bentley**. Thank you, Mr. Hammerschmidt.

Mr. **Anderson**. Mr. Shuster?

Mr. **Shuster**. No questions.

Mr. **Anderson**. Mr. Clinger?

Mr. Hastert?

Thank you very much, Mrs. Bentley.

Mrs. **Bentley**. Thank you, Mr. Chairman and gentlemen, my colleagues.

Mr. **Anderson**. I just notice that we have got a vote.

We better go vote.

We will recess for 20 minutes.

[Brief recess.]

Mr. **Anderson**. I think we might as well get going.

Our second witness is the President and Chief Executive Officer for the American Trucking Association, Mr. Thomas J. Donohue.

[Witness sworn.]

## TESTIMONY OF THOMAS J. DONOHUE, PRESIDENT AND CHIEF EXECUTIVE OFFICER, AMERICAN TRUCKING ASSOCIATION

Mr. **Donohue**. Mr. Chairman, perhaps swearing in is a good thing to do today because what we are going to talk about is the truth of the matter.

Mr. **Anderson**. Before you begin, Mr. Donohue, I want to take a moment to thank you for your patience and your understanding at our June hearing. We appreciate your willingness to reschedule your appearance after our committee mark up ran late into the afternoon. We are glad to have you back with us.

Mr. **Donohue**. Thank you.

I appreciate your courtesy.

I am not going to waste time this morning with a lot of rhetoric.

I would like to outline the problem of the overweight container issue as we see it and make a simple solution for a suggestion.

Mr. Chairman, representing a geographic area that is the home of the number one port in the United States, you particularly well aware of the magnitude of the overweight container problem.

In fact, you saw it first hand several weeks ago. It is a serious issue that is not going to to away unless we act on it.

First let me just outline the problem. We know that overweight containers compromise the safety of the motoring public.

We know that overweight containers increase stopping distances and decrease the driver possibility to control the truck.

We know that overweight containers are illegal, at least they are when we take them on the highway without special permits.

We know overweight containers hurt American's international competitiveness. Shippers who use them enjoy a competitive advantage not allowed to those who operate legally.

We know the one link that takes the most risk pays the most fines and is under the greatest pressure to take the economic containers is the motor carrier, particularly the independent operator. There has been a lot of testimony here, particularly in the last time we were together.

A lot of it could be characterized as passing the buck. What did you hear the last time we met?

You heard the DOT does not know what to do. They choose to ignore the results of their own analysis and say they have no plans to follow up the issue.

But they go on to say they feel the overweight container problem is a highway issue. Mr. Chairman, isn't that what we have the Federal Highway Administration for?

Then we have our friends at the Federal Maritime Commission who admit that they probably have jurisdiction to address the problem, but they choose not to exercise that jurisdiction. Meanwhile, the states are issuing overweight container permits which encourage these types of loads on highways.

You must realize that the decision to issue permits is driven by competition for port activity which many of the states claim their economies are dependent on. A piece of paper does not make an overweight container safe.

Everybody is passing the buck. Everyone is ducking the issue while truck drivers continue to knowingly or unknowingly violate highway regulations and pay the price in terms of safety and fines.

What is the solution?

Mr. Chairman, I think it is relatively simple. One, the trucker must have the right to know the weight of the cargo he is hauling before he is asked to move it.

I have been told by some truckers the first clue you get it is overweight is when the front wheels tip off the ground.

Second, the shippers must share the responsibility for overweight containers, including any fines and liabilities.

If they intentionally deceive the trucker, they should be 100 percent liable. If the trucker knowingly hauls an overweight containers that is illegal, he must share the responsibility with the shipper.

Finally, we want to make sure that if the truck driver and the motor carrier decide not to pull a load that violates limits that they are protected from economic retaliation.

Mr. Chairman, I urge you and your colleagues to explore a legislative solution which would activate these three principles of fairness.

To their credit, motor carriers and shippers are working together through a special task force to try and find the legislative solution to this problem that is agreeable to all. Even if we come to a mutually agreed upon course of action, federal involvement will be required.

We are willing to wait a short period of time to see if this group will come to an understanding. If they do, we will as a group present their findings to your committee.

If they don't, we will be back to see you about a legislative solution similar to the one I just mentioned.

It is time for all parties involved: the shippers, carriers and the government authorities and the Congress, to stop playing three blind mice and act to solve the problem.

A lot is at stake. This morning Congresswoman Bentley made a proposal to move forward and have a one-year study by the FMC to see if they could figure out how many containers are overweight and educate people on how they ought to be packed.

I have no opposition to a program to weigh the containers and educate folks about the problem. I do have opposition to waiting a whole year to get this done.

If this committee instructed the DOT to go out and weigh the containers, it could be done in a month.

I would also echo one other thing that Congresswoman Bentley said. We ought not go to one port and do it. We ought to do three or four at the same time. When we do it, we shouldn't tell them we are coming.

The issue is a simple one. Let's get the facts, let's act accordingly, let's resolve this problem and let's quit the three blind mice business where everybody is passing the buck.

Mr. Chairman, that sums up what I wanted to say the last time and that I was very happy to say this time.

[The prepared statement of Mr. Donohue appears on p. 394.]

Mr. ANDERSON. Thank you very much.

I have a couple of questions here. Can we assess what part of the total problem created by overweight vehicles is attributable to the movement of overweight containers?

Mr. DONOHUE. Well, Mr. Chairman, overweight vehicles on our highways are pretty carefully measured. We do more than a million road side inspections a year for safety, and most times we weigh those trucks.

We have weigh stations all around this country that people have to run through with the general traffic hauled around the country. If there is some overweight, and, of course, there is some, we catch it.

What we are really talking about in this instance is an overweight problem that is generally within 100 miles of port.

The overweight hauling there is very serious. I should make this point. I am not sitting here complaining about 100,000 overweight.

We are talking about container that are significantly overweight 10,000 pounds, more. The major problem that we face is in the ports.

It is simple. They put the container on the ship wherever they send it from, they don't pay by the weight of the container. They pay by the number of container spaces they buy. They load it right up to the top.

If you have got beer coming from Holland and if you have steel coming from the Far East, you have got some weight that will scare you half to death.

Why should we let them do that? Why don't we make them put it in more containers?

Why should we give them an economic advantage and why should we take a risk on our roads?

I would be very happy to admit that I don't know exactly which container are overweight or how many. I read the study.

I have been to the ports myself. It is not very complicated to weigh them.

There is two ways to do it. You can do it with scales or you can do it with a little piece of tape that goes around a wire that picks up the container.

Based on the stretch of the tape it electronically tells you within a couple of pounds how much it weighs. The reason we are ducking this is because nobody wants to deal with the problem.

Mr. ANDERSON. I said can we assess what part of the total problem created by overweight container is attributable to the movement of overweight container?

If we can not, are there steps that can be taken to get a better handle on the scope of our problem or is a follow up the original FHWA PIERS study our only resort?

Mr. DONOHUE. The FHWA study is basically a paper trail. That assumes you believe what is on the paper.

My feeling is that Mrs. Bentley this morning made a very excellent point. If this committee rang up the DOT and had a resolution to the committee and said we want you to weigh those containers, we would get very finite information in a big hurry.

We are not not talking about high technology. We are talking about weighing a container.

We weigh trucks and loads every day in this country. We have portable scales that we could move into a shipyard with no notice and you could weigh those containers.

We are not talking about a complicated issue.

I can make a guess, I can tell you what percentage. For some reason the FMC doesn't want to deal with it, yet they say they have jurisdiction.

The DOT doesn't want to deal with it. Who is going to deal with it? The trucker who is paying the fines and having the accidents and taking bad publicity?

I thought Mrs. Bentley made another interesting point. A lot of these containers are going on railroads.

If you look at a lot of derailments, it is simple.

You put the heavy one on the top, you have got a balance problem.

Mr. Chairman, we are all speculating. It is time to stop speculating and start weighing.

Mr. ANDERSON. Are any studies available that evaluate the braking and handling impacts of overweight container on motor vehicles?

Mr. DONOHUE. You can choose vehicles to move heavier containers. You can, therefore, disperse the axle weight more appropriately and you can brake them better. Those aren't the types of trailers we are using to move those containers.

If you go into a port, you will find some of the most ill-kept, poorly maintained trailer beds in this business. Generally they are owned by the shipping companies.

So what happens is they are not the best tires and they are not the best brakes.

They are not run by legitimate trucking companies. You put on an overweight container and then you take it on the road.

The question you have to ask yourself, when am I taking it, what is the traffic, what kind of condition is the trailer in, how experienced is the driver, what is the weather like?

When Mrs. Bentley and I went to New York to view the weighing system they had up there, it was a very rainy and foggy day. It was interesting.

As we left there to go to the railroad yard, there were three trucks accidents all with container. They were off the road.

I mean you don't have to know a lot of physics to figure out if you are significantly overweight, the truck, and you do it in a way on a trailer that has not got the right kind of brakes, that you have got a real serious problem.

I can't quantify for you exactly how many accidents or what percentage of difficulty is created by an overweight container.

I will tell you, though, that this committee and your other committees spent a lot of time arguing about axle weights and weights not only to protect the road but to protect the safety of drivers and other citizens. This container issue is one people don't want to look at.

If we were running, if trucking companies whose names you know were running trucks as heavy as these containers are around the same areas, you would be putting those people in jail.

Mr. ANDERSON. We have heard statements to the effect that if a driver refuses to pull an overweight load or one with a safety defect that the next driver that is willing to haul the load moves up and the conscientious driver must run to the end of the line to wait perhaps as much as two hours for another load.

How widespread is this practice?

Is this the case nationwide?

Mr. DONOHUE. My understanding, Mr. Chairman, that this is the practice and the rule. If you pull up and say, "I won't take that container, " they say, "go to the end of the line."

Mr. ANDERSON. That is nationwide?

Mr. DONOHUE. There may be ports I am not aware of, but that is the general practice. Put yourself in the position of the person that is an independent operator or has a small company with three or four trucks. And to go to the end of the line, you lose at least one load.

If you can only do three loads in a day, you are losing one third of your income or a fifth of your income depending on how many hours you are working.

The inclination is to say, "I think I will move it. I have got to feed may kids."

What we are doing is we are subsidizing the economic conditions of other countries who say load up the old container, send it over there and they will move it. We could call up the people that are sending them over here and say we have three choices for you.

You can come get this container or we will move it on a special chassis at four times the price or we can let the ILA break it down and put it in separate containers and keep their share and send it on to wherever it is going to go.

My feeling on this is that we are being, you know, we are the fools at this party. We are unsafe, we are economically unsound, and we are doing this to assist people that we are competing with.

I don't know the sense in it. But we are here—the truckers are not here asking for radical surgery. We are asking to weigh the containers. If there is a legitimate problem, let's do something about it. That is all.

Mr. ANDERSON. Mr. McEwen, do you have any questions?

Mr. MCEWEN. Thank you, Mr. Chairman.

I will ask the same question I have asked before. It doesn't seem all that impossible that people in the shipping business should know how strong their cables are and how much weight the cranes can handle.

There has to be some weighing going on someplace.

It doesn't seem all that difficult to me to weigh it, stick something on there that says how much it weighs and send it on to wherever you want to ship it. And when you get there, it is emblazoned on there: "this weighs three times as much as any one container that should be carted across the highway at one time," so that truckers know they are at risk.

In our last hearing we heard a lot of hem-hawing around as to how that would be difficult and you couldn't do that.

We say why? The bottom line was because you don't want to.

Mr. DONOHUE. I would agree there are some loads because of the product being moved. What you do is you make special arrangements.

If you know the thing weighs twice what it is supposed to weigh, we have means of moving that. But let's get it on the right truck with the right tractor pulling it and the right driver in the thing and let's move it in a sensible way.

Mr. MCEWEN. I think they don't want to say it can't be done. They know once you say it can be done, they will want to enforce it. That is where the problem is.

People will always act in their economic interests, period. I didn't need a degree in economics to figure it out.

It was found out thousands of years before me. Nevertheless, people will always act in their own economic interest, period. Those nations that understand that and use it to their advantage to prosper.

Those who try to circumvent and ignore it fail. We need to come up with an economic solution that is in the economic interest of the producers and the shippers to meet the requirements of those people in America that have maintained and utilized the transportation system, on which has been spent a mere four-tenths of a percent of the GNP in the past decade.

We have a great margin of error for inconsiderate foreign intersts to load up containers that threaten to destroy the remnants of the system that we have. Therefore, there ought to be sufficient sanctions on either the shipper or the producer that could require that the shipment be labeled and that the weight be there.

And if the shipper, upon arrival here chooses to sell that item in the marketplace by means of transportation in violation of weight limits, then he should pay a premium.

Unless someone can explain it to me further, it doesn't seem all that difficult to understand.

After we slap a few significant fines so it is in his economic interest to not put us through all this, then it will be enforced. We can also grab highway patrolmen and drop them out of the trees at various places and hope that frightens him enough into doing it.

It appears to me that we can use economic forces for us. That is if you lose a third of your company and you do twice, chances are it won't happen the third time.

Mr. DONOHUE. My concern as we begin to apply these economic forces is that the weight of the force does not fall on the trucking company and on the driver. The container was originally packed by somebody that knew it was overweight.

It was accepted by the shipping company that knew it was overweight. It was dispensed by the shipping company that knew it was overweight.

It was permitted to some extent and encouraged by the port who wanted the business. The guy at the end of the line is the fellow that owns one or two or three tractors and gets in front of one of those trailers that they provide and is going to drive the 28 miles down the road to the railroad or to a breakout place and so on.

There is the guy who gets all the economic leverage, all the bad publicity and all of it, all the difficulties.

Mr. MCEWEN. He is the object of enforcement at this point. He is the only one that is fined.

Therefore, all the burden is being placed on him, and he cannot properly make a decision because he doesn't have all the information. Once the information is there and it says boldly on the side of the container, "This weighs as much as the Empire State Building," he then either cuts a deal at this point or takes some other course of action.

If, once that information is available, he is going to cut a deal above and beyond everybody else in the line. Then he is no different than the dope dealer and dope purchaser because both of them have engaged in illegal activity.

In the meantime, you can't expect the entire enforcement of the highway weight codes to fall upon the person who is picking up a load over which he has little or no information other than the fact of its measurements.

Once that information is available to him, and if it is incorrect, then he has recourse against the person that gave the incorrect information.

It seems to me we ought to require weighing; in our last hearing they said you couldn't do it. I——

Mr. DONOHUE. If you would like, if you get a nice sunny afternoon and you want to take a ride, I will show you how to do it. The idea that you can't do it is absolutely absurd.

If you want to go to elementary methods, you put it on the trailer and you drive it over a scale. Very complicated, you know. To say you couldn't do it means, "I won't do it."

Mr. MCEWEN. You read my question.

Mr. ANDERSON. What percentage of the companies reimburse the drivers for overweight fines?

Mr. DONOHUE. I am not sure, Mr. Chairman. I hear numbers from 25 to 50 percent of them that reimburse them. They consider it a cost of doing business.

On the other hand, there are some that, you know, me. We didn't have anything to do with that. That is your problem. You took it.

Mr. ANDERSON. If 25 percent do, 75 percent don't. Which means it hits the drivers.

Mr. DONOHUE. That is correct. It is a tough deal for the driver. I am not here with a crying towel saying these poor drivers.

I am saying we take huge amounts of material every day through ports all up and down the Eastern and Western United States and we haul it and it is overweight and the driver is trying to make a living. The fellow that gave him the container knows it is overweight.

We want to get accountability here. I think before we listen to my rhetoric and everyone else's rhetoric, it is a simple thing. Let us do diagnostic activity. Weigh the containers for a couple of weeks in a few places and find out. We may find out it is a small problem.

If so, I will apologize. On the other hand, your hair might get a lot grayer than it is when you see some of those weighs and how many of them there are.

While we are talking about problems, there are a lot of containers going the other way that have the same problem. We are dealing with that and we are catching those.

I think it is something the committee— the committee here deals with so many complex issues that are so difficult to resolve. Here we are sort of overwhelmed by the simplicity of the matter.

What is the problem with weighing the damned containers?

Mr. MCEWEN. Exactly.

Mr. ANDERSON. We have heard about the use of scale fees to compensate drivers for circumventing known scale locations. Could you elaborate on this practice?

Mr. DONOHUE. Mr. Chairman, I am not familiar with that practice. I have heard details and folklore about how folks are paid extra little something to go another way.

By the way, how you go on another way? You go on a road probably less designed for heavy trucks, residential or light industrial areas instead of the heavier highways.

If that is going on, it is a double problem. Number one, it is blatantly illegal. Number two, you are creating a double safety problem.

I don't know the extent that that is going on. It is folklore.

As a matter of fact, a whole lot of this is folklore. I have said this five times, but I think we can do ourselves a great favor.

Let's go find out what it weighs.

Mr. ANDERSON. Can you estimate what percentage of the overweight container movements by motor carriers are within 100 miles of the port or the terminal they serve?

Mr. DONOHUE. Ninty-percent. Easily 90 percent.

Mr. ANDERSON. Ninty-percent are within 100 miles of the port?

Mr. DONOHUE. Sure. There is a permit to go to some of those districts.

The permits in many ports will say you can go north or south but the destination of the container may be east or west.

It is a very, very contained area. And not running willy-nilly all over the United States of American. The whole deal is within 100 miles of the coast.

If you study geography and demographics, that is where a large portion of the United States lives, within 100 miles or 200 miles of the coast. It is a complex issue.

I think we start off and make it a lot simpler if we can get the data.

Mr. **Hastert**. Mr. Donohue, I am in the Midwest. You know, every time I go into the City of Chicago via I-55, I see the corridor there where Burlington Northern and CSX and everybody else unloads their trailer trains and containers get put on trucks and hauled.

I don't think it is probably just the one spot. I think that problem permeates wherever those boxes go.

Mr. **Donohue**. I think that is a very good point, sir. I think after the railroads get it, and much of that is taken almost directly to its destination.

You go to Chicago and you go to Detroit and you go to people that are building, a good deal of the double stack train coming west to east is automobile parts either for construction or replacement, much of it coming from Japan. That is very controllable.

But, you raised a good point. It probably would be a good idea to check that problem. Remember, all of that came to a port originally.

If we nailed it at the port, you would know whether it was going on the train if it got to Chicago——

Mr. **Hastert**. I am going to show a little ignorance on this. I am not sure if they get put directly on the train.

Mr. **Donohue**. Let's take an example about New York, New Jersey. A ship comes from Rotterdam. It is loaded up with Heineken's Beer, one of the higher weight products.

Of course the container is now going to go on the railroad. One of our trucking companies would go over there. They have fellows that are regular and they would pick it up.

They would take it about 12 miles down the road to where they would load it on the railroad. There is a railroad loading yard. Then they put it on there and they cart it off to their destination.

They pick it up there and take it to its destination.

There is one other thing. Some containers do go by barge to various different terminal ports or they come by ship through the Great Lakes up to ports up near your area.

If you go to where the water meets the land and you get the container coming on land, you know what it is, you have got the weight slapped around it, you decide how to handle it. Eventually even if it is overweight and you put it on the railroad, that trail, that acknowledgment follows it wherever it is and it ought to be treated the same way in Chicago as it is treated in New York, New Jersey.

Mr. **Hastert**. Is it illegal in another spot if it gets off the trail?

Mr. **Donohue**. In Long Beach it might be within the tolerances that are allowed by the port. Let's say the city has given them a permit to take it to the railroad yard. They pick it up.

It is 94,000 pounds and the permit allows them to take it to the railroad. They put it on the railroad and take it to Chicago. Maybe when they take it to Chicago, it is now overweight. I think probably it is.

Mr. DONOHUE. Come back to my original point to find a solution, is to know what it weighs. The knowledge is, comes when we know how many of them are overweight. The first step in that is telling the government to weigh the containers.

Mr. HASTERT. You are saying in your testimony there are overweight containers going the other way, too?

Mr. DONOHUE. I didn't put it in the testimony, but I mentioned it. There are containers overweight going the other way. And some of them have to be overweight because of the cube of what they are putting in there, and they can get permits on that.

We move things every day in this country with a permit. The ones I would be concerned about are those without a permit.

That is a dangerous thing to do. If you put them on a different kind of truck, if you have a permit you use the necessary number of axles and other safety mechanisms, doubled up breaks, and so on because you have more axles.

Sure let's do it. Right time of day. We have to be able to move those kinds of things.

We have these rules for a reason. If we are committed to safety, if we are committed to safety, soundeconomics, if we are committed to common sense, we will do this.

Mr. HASTERT. Do you have any knowledge when those containers go the other way, wherever they land, do they regulate, do they refuse to take those products across their highways? What is the reciprocity?

Mr. DONOHUE. Generally it is not a problem. Container weights in most parts of the world are higher than they are here. One of my major concerns is as we develop two major economic cartels, one in the European Community by the unification of the West and East Germany, who are going to pretty much define the standards by which things are moved, and the other in the Asian Community dictated by the Japanese who are saying who is going to build what in much Asian areas with their money, if they set a standard on size and configuration and construction and weight, and if we want to play in those two major economic cartels, we are going to be playing by their music.

It is very important for us to set the standard so that at least it is clear what the circumstance is. If we are going to negotiate trade arrangements with those groupings of trading partners, that we can include this in the process.

It is one thing to agree what we are going to trade. It is another thing to agree how we are going to move it.

There are lots of exceptions to this. For example, now we are moving all manner of military supplies and equipment across this country and out of here to support our men in the Middle East. We are moving all kinds of stuff.

I am not even going to tell you what that stuff weighs. That is an exception. Everybody is rallying around the flag and let's get on with it.

What we are talking about here is something that goes on every single day of the week. I would like to know how serious is the problem and what becomes the role of the government in helping us solve it.

To have the government sit up here and the DOT and everybody else and say not us, well then, who?

Pass the resolution. Give us the authority. We will measure it and print it on the first page of a newspaper. It doesn't seem very sensible to do that.

Mr. HASTERT. Thank you.

Mr. ANDERSON. Mr. Donohue, on page 5 of your testimony, you refer to motor carriers receiving containers gross and axle weights before leaving the loading point.

Rather than receive the exact weights, would it be feasible to give the motor carrier written verification that this is a potentially overweight container that needs to be scaled at or near the loading point before its trip begins?

Mr. DONOHUE. Let's take a hypothesis. I am driving a truck, pull us, they drop a container on the back of it. Somebody says you have the truck.

I think before you take it out and take a risk of getting a ticket, you ought to go inside the yard and weigh it. Now I go weigh it. It is 16,000 pounds overweight and I scratch my head. What am I going to do?

Now I know. They tell me I know but they didn't know. I don't know it is overweight.

You know it is overweight now. What are you going to do with it?

Are you going to take it back, get on the end of the line? We are talking about a trucker that maybe is making $23,000 a year if he is working more hours than you should. He has got to feed his family and send his kids to school.

He is sitting there with that container. You are talking about economic pressure.

Come on, they are going to deliver it.

By the way, most everybody sitting in this room would deliver it. We have got to create a situation that makes—you did it in the government.

What you did is your protected whistle blowers all over the place because they used to get themselves in trouble. Well, somebody driving a truck that starts blowing a whistle on the shipper has that same kind of trouble and no protection.

Mr. MCEWEN. I lost you.

Mr. DONOHUE. Here is the deal.

Mr. MCEWEN. Here is the deal. You have got 16,000 extra pounds. He says take 16,000 pounds out of there.

It is against the law for me to drive out that gate and I am not going to do it. Either the shipper or the purchaser has got to come up with a system to get the other 16,000 out of there.

Economic pressure is then on the fellow who has purchased the Panasonic TVs, that has got 16,000 pounds of them sitting under the protection and security of the longshoremen.

Mr. DONOHUE. What will happen now? They will say to you, that is fine.

You take that over and leave it right there, and you go down there about six blocks away and you get on the end of the line. We will see if the next time up you get one that is not overweight.

Mr. McEwen. That is exactly what I am saying. The burden has to be on everyone.

Mr. Donohue. I agree. What I was speaking about the present circumstance. If today in the Port of Long Beach you pulled up your truck and you were told this may be overweight. We are not sure now.

You go down there and weigh it. You go down and weigh it and find it is 16,000 pounds over, you only have two choices. One, haul it. Two, leave it and get on the end of the line.

Mr. McEwen. We have to devise a system whereby the shipper or the purchaser bears that burden as well.

Mr. Donohue. Amen.

Mr. McEwen. Let's flat do it.

Mr. Donohue. I like that headline.

My kind are walking around with a hat on that says, "Just do it."

Mr. McEwen. Mr. Chairman, I don't think my time has expired.

Rallying around the flag and hauling lots of heavy things across our highways isn't a real concession on our part in using the National Defense Highway in times of emergency.

Mr. Donohue. It is absolutely appropriate. For a period of time you couldn't get a flat-bed truck in this country because we were moving tanks and everything. That is exactly what we built them for. That is exactly we—we have a system for helping out and we have been helping out.

Mr. Anderson. Proposals have been made to treat intra-port movements of overweight containers with permits and controls within a specified zone. Such a proposal was adopted by the United States Department of Transportation.

What is your reaction to states being given authority to establish such zones assuming that proper permit fees and controls would be utilized to ensure that the maintenance of roads and bridges and the safety of the traveling public?

Mr. Donohue. You take care of two of three problems if you did that. I would support part of that. You take care of the problem of it being illegal.

Therefore, the driver would not be at tremendous risk. Secondly, you would collect sufficient fees to maintain and rebuild and perhaps better build the roads ~~in the~~ future.

The third thing is not quite clear to me. That was would we change the safety business? But if you clearly knew it was overweight and you made one other adjustment, and that is made sure you had the right equipment and did it at the right time of day, and so on, we would be most of the way there.

So quickly, if you did it on a permit system, it is now real. You collect the necessary fees. If you have the information that goes with it, then you make sure it gets on the right equipment and that it is properly handled and it would be safe.

We carry heavy weights in this country. We do it properly. I think you are in the right direction there.

The key to that type of system, Mr. Chairman, is knowing what it weighs.

Mr. Anderson. Such a proposal to have special permit zones and the harbor area for overweight movements may solve a port's problem. How can we control the inland movements around the rail terminals that Mr. Hastert referred to?

Mr. DONOHUE. One point, I think, is if you have the information, you know what it weighs. Then you have two choices at the inland movement.

One, you set up a similar permitting fee and safety control system or, two, you are right back where you are, that you have a very significant overweight container problem and you have to either break it down as the Congressman indicated or find some other way to handle it. We all know this is a complicated issue when it gets to what do you do after it is off the railroad, and so on.

The problem in dealing with it is everybody is not sure it is an issue in the first place because, and I have said this so many times, but I am going to keep saying it, let's find out what they weigh.

Let's figure out if we are going to have a permit system. The Congressman, if he is going to have a lot of freight coming to his community and if he can be assured he knows what it weighs and his community will have a collection system and a safety system that accommodates the freight they want to move, but he can't do that if he doesn't know what it weighs and if everybody pretends it is not overweight and if everybody sits around and says this is not a problem.

You can do the same thing in Illinois that you can do in Long Beach if you have got the right information and smart people figuring out how to move the freight. It is not a logistics problem.

It is a legal problem, financial problem and safety program.

Mr. ANDERSON. Mr. Hastert, do you have any more questions?

Mr. McEwen?

Thank you, sir.

Mr. DONOHUE. Thank you very much for your time, Mr. Chairman.

Mr. ANDERSON. Now, our next panel will begin with Mr. David B. Letteney, the Executive Secretary for the Atlantic Regional Committee of the Steamship Operators Intermodal Committee; and then Ms. Lisa Koukal, Federal Affairs Representative of the United Shipowners of America will present her statement.

Mr. Hastert, would you like to join us up here? I think first, I will have to have Mr. Letteney and Ms. Koukal raise your right hands.

[Witnesses sworn.]

Mr. ANDERSON. You may be seated. Mr. Letteney, before you begin, I would like to thank you both for agreeing to join us today, after your June appearance was postponed because of our full committee mark-up. We appreciate your flexibility, especially considering the distance you had to travel.

Mr. Letteney, you may begin.

## TESTIMONY OF DAVID B. LETTENEY, EXECUTIVE SECRETARY, ATLANTIC REGIONAL COMMITTEE, STEAMSHIP OPERATORS INTERMODAL COMMITTEE; MS. LISA KOUKAL, FEDERAL AFFAIRS REPRESENTATIVE, UNITED SHIPOWNERS OF AMERICA

Mr. LETTENEY. Thank you, sir. I will not go into the details of my earlier statement, much of it has been touched upon before, except to say that the SOIC has been involved--deeply involved in overweight container problems since there became evidence to us there was a problem, and this was back in 1983.

We have cooperated in the two test demonstrations in New York, and we—which probably was the genesis of all of these hearings today.

I perhaps am going to surprise you a little bit and say I agree with much of what Mr. Donohue had to say. He—I may disagree in detail and in degree in some places, but generally speaking, I agree with what he had to say, that he—we need three solutions:

A shared responsibility—I certainly agree the trucker is entitled to know the weight, and the truckers should be protected from retaliation.

Finally, I agree with you, Congressman McEwen, that there should be an economic disincentive. And those threads go throughout some of my statements.

I also submitted a supplemental statement which I would like to perhaps expand upon.

First of all, the comments of some of the previous witnesses.

As a general comment, we in the SOIC are disappointed that the U.S. Department of Transportation is not more deeply concerned with the problem. While they recognized that competition among States and ports, together with broad interpretations of States' grandfather rights is making the problem more critical, they appear to dismiss its severity because marine container chassis represent only 8 percent of registered commercial vehicles in the United States.

As Mr. Donohue pointed out, while these relatively small number of vehicles are, for the most part, concentrated in densely populated metropolitan areas where traffic volumes are heavy, road repair costs high and weight enforcement minimal.

The testimony of the State of California, as well as city and port authority officials, amply demonstrates their concerns for the viewpoint of those responsible for highway maintenance and safety.

Steamship lines, ocean freight conferences and the trucking industry are united in their expressions that economic disincentives to overloading are essential, and the burden of fines and penalties must be, at the least, shared by the parties responsible for overloading and, finally, there must be uniformity between the States and the Federal Government, grandfather rights notwithstanding.

During the June hearings, we were given some sheets of questions, which I would like to respond to.

First question: Does your organization have input into the International Maritime Organization consideration of a proposal that would require the actual weight of the container to appear on the shipping documents? What is the current practice? If the IMO adopts this proposal, how would it be enforced?

The answer: I am a member of the U.S. Coast Guard's Panel on Multimodal Transport and Containers, and I have in fact corresponded on the desirability of IMO action. Several SOIC members also have input to IMO deliberations through membership on their national delegations.

If IMO should adopt this practice, enforcement would, in all probability, be delegated to member countries' designated authorities such as the Coast Guard in the U.S. and the Health and Safety Executive in Great Britain.

While IMO action would represent another tool in the enforcement kit, it would, I believe, be a low priority item for most governments and nowhere near as effective as State efforts under Federal oversight.

It should also be noted that, in the vast majority of cases, cargo weights are accurate as declared and manifested. This is particularly true in trade with developed countries. There are, however, several reasons why weights may be misstated:

In some commodity trades, only the product weight is stated; for example, coffee. The bags themselves may add a few hundred pounds.

Similarly, when pallets or securing materials are utilized, their weight is often not included.

On multiple container bills of lading, there may be variations in individual container weights. For example, a large shipment of beer may have kegs in one container, bottles in another and cans in a third. However, most ocean carriers are able to provide accurate individual container weights.

When containers are pier-loaded, and this is a very common routine in underdeveloped countries, it is sometimes impossible to determine weights for individual containers.

And, of course, there is the dishonest shipper seeking to gain some advantage by excessive loading.

Even when weights are accurately known by the ocean carrier and are made available to truckers, there are frequent instances when this information is ignored. Sometimes it is not passed on from importer to broker to truck dispatcher to driver. At other times, the trucker will hope that he does not encounter a mobile weighing team, and go on his way. Competitive pressures often force truckers to take such risks.

As to the effectiveness of the IMO to certify container weights, it would help the problem but not solve it.

Question: What revisions would you suggest for the FHWA PIERS study if that basic approach was to be utilized again?

Answer: Port Import Export Reports, PIERS, is capable of providing much greater detail than utilized by the FHWA in their initial study. In fact, it can go right down to the name of the shipper and ocean carrier, and that is the shipper who is the beneficial owner of the cargo. Any future study could be used to utilize this data to pinpoint specific instances of overloading.

It should perhaps be verified through pier visits to just verify the data that is obtained. One thing that was missing from the PIERS study is some definition of the margin of accuracy in the study.

Although we are not in favor of further study, we do feel that if one is conducted, it should utilize PIERS data as a low-cost source, for consistency and for accuracy. It may be found desirable to conduct field investigations in order to verify the accuracy of the data.

Question: From your perspective, can the overweight container problem be solved without a legislative solution?

Answer: Initially, SOIC felt that the problem could be solved through a combination of commercial effort and regulatory action. However, as we contemplate the variety of State regulations and grandfather rights, compounded by the multiplicity of foreign weight laws, we have concluded that only Congress can mandate a single, comprehensive and comprehensible solution to which all parties, including the States, will be bound.

Question: The PIERS study showed that U.S. exports are more likely than imports to violate weight limits. Do you agree with that finding? Should efforts to encourage shippers not to overload focus on the U.S. rather than foreign shippers?

Answer: We agree with the PIERS finding; in fact, SOIC anticipated that conclusion. Any effort to encourage compliance should focus, in my opinion, on U.S. shippers and receivers equally.

Question: Are there economic factors other than per-container rates that might encourage overloading of containers by exporters?

Answer: Yes, four basic factors are: International competition to sell similar products from different sources; land transport costs, truck and/or rail, from origin to port; easy access to overweight permits, notably in the Southeastern States; and foreign laws which often permit much heavier weights. These same factors affect imports.

Finally, I did want to comment on the Transportation Research Board's truck weight study which came out shortly after the June hearings.

We have not reached a conclusion on the merits of the recommendations contained in the Transportation Research Board's recently released truck weight study, but we have analyzed the impact of their recommended bridge formulas on container traffic.

Present bridge formula encourages the use of longer vehicles in order to maximize weight capacities. Short wheelbase vehicles such as marine containers and construction equipment are severely disadvantaged. The maritime industry has responded by developing so-called extendable chassis at costs approximately double that of conventional fixed frame chassis. While these chassis solve the problem of legal highway weights, there is concern about their safety, stability and driver competence.

Should the TRB recommended formulas be adopted by both the Federal Government and the States, the impact on 20-foot container movements would be significant. We estimate that the present conventional 23-foot-long chassis would be capable of carrying an additional 7,800 pounds of cargo beyond the 37,000 pounds we have been recommending.

Should the chassis be equipped with a third axle, it would be capable of accommodating approximately 11,000 pounds more. This would allow ISO-standard 24 metric-ton containers to be legally transported over U.S. highways at their maximum gross weight.

The analysis for 40-foot containers is somewhat different. Presently, 40-foot containers are limited to a gross vehicle weight of 77,000 pounds by the bridge formula. The new formula would allow a full 80,000 pounds gross vehicle weight, which would increase the cargo load by about 3,000 pounds.

In our earlier statement, we noted that 40s loaded to 45,000 pounds resulted in overloaded tractor axles, presumably caused by shipper loading practices; a phenomenon that is probably impossible to correct, even with an intensive educational program.

The recommended formula for vehicles with wheel base lengths in excess of 24 feet would permit flexibility in the design of 40-foot chassis and encourage the addition of a third axle, with a resultant increase in load capacity and improved weight distribution across the axles.

However, as we said in our earlier statement, we urge Congress to allow, within limits transfers of weight from one axle set to another, in order to overcome this particular problem.

I want to thank you for the opportunity to present our views.

[The prepared statement of Mr. Letteney appears on p. 428.]

Mr. ANDERSON. Thank you, Mr. Letteney. We will hold our questions.

Ms. Koukal?

Ms. KOUKAL. With your permission, I would like to abbreviate my statement and submit the full statement for the record.

The U.S.A. is a trade association representing more than 99 percent of the U.S. container fleet in the foreign commerce of the United States. Being a U.S.A. flag vessel means you employ 100-percent U.S. citizens aboard your vessel.

Our member companies are American President Lines, Limited; Central Gulf Lines, Inc.; Crowley Maritime Corporation; Farrell Lines, Inc.; Lykes Brothers Steamship Company, Inc.; Sea-Land Service, Inc.; and Waterman Steamship Corporation.

U.S.A. members are engaged in the transportation of containers in domestic and international trade. These containers are commonly loaded at an inland point and transported by rail or highway to a port, and subsequently carried in ocean commerce by common carrier to the destination port, where they again travel by rail or highway to their final destination.

The containers are usually loaded by the shipper, closed, sealed, and transported by truck to the rail head or ocean terminal. From the time the container leaves the loading dock until it reaches its final destination, the integrity of the seal remains intact.

Since the advent of containerization more than 30 years ago, the truckers, railroads and ocean carriers have relied on the shipper to provide an accurate description of the contents and, in some cases, the weight of the cargo. Since there are liability problems associated with reopening a sealed container, it is imperative that the shipper correctly state the contents and weight of the cargo on the manifest.

Though it is a recognized fact that overweight vehicles have been traveling across U.S. roads, the Federal Highway Administration PIERS study conducted last year was one of the first attempts to make a relative determination of which commodities tend to contribute most to the overweight container problem, and through which ports these commodities move.

Interestingly enough, the report also showed that 38 percent of 40-foot export containers were potentially overweight, compared to only 17 percent of 40-foot import containers. This suggests that overweight containers are found in both imports and exports.

Many factors can contribute to making a container overweight. In addition to the inconsistent State and municipal road vehicle weight limits, it is possible for a container carrying vehicle to violate legal weight limits because of excessive gross vehicle weights, cab or chassis, excessive axle loading, or a combination of both.

For international shipments, the problem is exacerbated by foreign gross vehicle weight limits that differ from, and in many cases, exceed those of the U.S. For instance, the European Community is considering adopting a uniform highway weight limit of 88,000 pounds, 8,000 pounds more than the maximum weight allowed on interstate highways in the United States.

If the differing State limits for gross vehicle weights are not complicated enough for shippers to deal with, there is also an axle weight restriction. The measurement of weight distributed directly over any set of axles cannot exceed 20,000 pounds for a single axle and 34,000 pounds for tandem axles. States and municipalities may also have weight variations for the maximum axle load while still retaining the 80,000 pounds gross vehicle weight limit.

The final weight limitation governing containers is the distribution of weight between axle settings. For instance, a 20-foot container may be grossly overweight on a short chassis, but may fall within the gross vehicle weight limit if it is transported on a longer chassis. The combination of distance between extreme axles, and the number of axles on a vehicle, combine to provide the maximum gross vehicle weight using the Federal Bridge Formula as a means of calculating the total.

In addition to the varying weight restrictions throughout the United States and the rest of the world, another factor contributing to the overweight container problem is the existence of per-container rates for a wide variety of commodities.

Under the rejected rule proposed in FMC Petition P4–89, per-container rates would have been prohibited for certain commodities most likely to contribute to the overweight problems, starting with those listed in the PIERS study. U.S.A. commented on that petition, stating that we are in favor of eliminating selected per-container rates which may provide an incentive to overload containers.

Of the over 90 comments received from interested parties, the FMC found that ocean carriers, truckers and ocean conferences supported the petitioners, while shippers and NVOCCs opposed the petitions. U.S.A. regrets that this attempt to solve the problem was rejected.

While U.S.A. is disappointed by the FMC's rejection of Petition P3–89 and P4–89, we realize that in most instances, a container does not become "overweight" until it is placed on a chassis and then transported on roads. In fact, a container can easily fall within ISO safety standards and be safe for rail travel, but be classified as overweight once it hits the road. Thus, the FMC is the appropriate Federal agency to oversee the elimination of some per-container rates; it is not the appropriate agency to deal with trucking issues.

Recognizing that the variety of weight restrictions are confusing at best, and that the FMC has decided to deny the two petitions, U.S.A. believes that shipper education is the first and most important step in overcoming the overweight container problem.

Shippers, or those that pack the containers, need to be made aware of differing weight restrictions from State to State, and country to country. The shipper also needs to learn how to pack a container so the weight is properly distributed over the axles.

Besides shipper education, U.S.A. also believes that each port area should have easily accessible scales, enabling the trucker to check on questionable weight loads.

Just as scales must be available in all terminal areas and municipalities, all parties must be responsive to the overweight container problem. Competitive pressures dictate that all carriers and terminals be subject to the same regulations and that these regulations be enforced equally.

If a particular ocean carrier or terminal is viewed as being capable of accepting of overweight containers, all other carriers and terminals will become economically disadvantaged vis-a-vis the carrier or terminal that accepts overweight containers.

The overweight container problem is enormously complicated, and there are no easy solutions, as I am sure you have realized through your investigations. U.S.A. believes that the solution ultimately lies with the shipper, or the person that packs the container.

U.S.A. also believes that the existence of scales at ocean terminals and inland points will be a welcome step toward a solution. U.S.A. also believes it would be premature to seek a conclusive remedy at this point, but believes that some steps should be taken.

Thus, U.S.A. requests Congress to legislate the elimination of per-container rates as the first of many steps toward solving the problem. I hasten to add that U.S.A. has been working on the problem since the inception of the trade association, and on a company-by-company basis for several years.

In fact, several U.S.A. members are involved in a task force comprised of shippers and ocean carriers, organized to resolve the specific problem of overweight containers being transported on U.S. roads.

Mr. Chairman, I would like to conclude my statement by saying that despite the confusion surrounding the overweight container problem, the responsibility for loading containers that will comply with highway vehicle weight laws rests solely with the shipper, or those that pack the container.

Thank you.

Mr. ANDERSON. Thank you, Ms. Koukal.

I have some questions for both of you. First, can we assess what part of the total problem created by overweight vehicles is attributable to the movement of overweight containers? If we cannot, are there steps that can be taken to get a better handle on the scope of the problem, or is it a follow-up to the original FHWA PIERS study, or is that our only resource?

Ms. KOUKAL. I believe in June, one of the problems mentioned was there was really no way to measure the transport of construction equipment, military equipment, other vehicles than container carrying trucks.

I think that needs to be part of the full solution.

Mr. LETTENEY. I agree. I don't think there is any way to separate container traffic from other highway traffic. State police themselves, during their inspection, often don't know the difference in a container and commercial vehicle. I see no way to segregate the two.

Mr. ANDERSON. The FMC stated in its denial of the two petitions that they "have not provided a supportable or appropriate basis for the action." Now, can this situation be remedied with a modified PIERS study? And if so, what revisions would you suggest?

Mr. LETTENEY. I think I covered that to a certain extent in my remarks, where I said that the PIERS is capable of much greater detail, including right down to individual shippers and the individual container weights. If that tact were to be followed, it should perhaps be supported by our visual verification through weighings of containers, selected weighings, and also perhaps the study should be sharpened up in terms of its statistical accuracy.

Basically I have no problem whatsoever with the original study.

Mr. ANDERSON. All right.

Ms. KOUKAL. I thought the study was a good starting point. I would agree with Mr. Donohue, it is based on a paper trail, and you have to believe that paper trail. I agreed with Congressman Bentley's comments this morning. I think the year-long study is a great place to start.

I also believe it has to be rotated between ports. The visits have to be surprise visits. The whole problem has to be taken care of on a level playing field.

Mr. ANDERSON. What alternatives are there, short of Congressional action, that could resolve the overweight container problem?

Mr. LETTENEY. Well, as was mentioned earlier, FHWA has a tremendous amount of authority that they are not using. Now, I am not familiar with the total legal basis, but it is my understanding that they have the authority to eliminate the grand—the use of grandfather rights for so-called indivisible loads in southern States.

It evolves around a question whether a container load is indivisible or not, and anything except a bulk load is certainly divisible, and it can be divided at the terminal. That takes care of imports.

What do we do about exports? The only way you catch exports is weight them on the highway or at their source. In any event, the Federal Highway Administration does have the ability to, or the authority to do more than they are doing.

I get very mixed emotions about the FMC decision. I certainly can sympathize with their unwillingness to open up that can of worms within their own Commission.

Mr. ANDERSON. What is your response to the comments of the recent FMC petition, indicating that ocean carriers are interested in the overweight container problem because they want to carry greater numbers of containers, and that the abolition of per-container rates was proposed to achieve higher revenues?

Ms. KOUKAL. I don't necessarily agree with that statement. I think it is, once again, passing the buck from the shippers onto the ship owners, the carriers. Our primary concern is that any solution be an equal solution to all parties. Being USA flag carriers, sometimes we are disadvantaged vis-a-vis foreign carriers.

For instance, some ocean conferences do have special rates for per-container—special per-container rates. However, not everybody has to uphold what the conference says. That is our primary concern.

Mr. ANDERSON. What portion of the 33 percent of potentially overweight containers reported in the PIERS study would you estimate are inadvertently versus intentionally overloaded?

Ms. KOUKAL. I wouldn't know what to say.

Mr. LETTENEY. I wouldn't, either.

Mr. ANDERSON. Is the experience different for imports versus exports on the West Coast and East Coast?

Mr. LETTENEY. Very definitely.

Mr. ANDERSON. What is the difference?

Mr. LETTENEY. Primarily—well, the West Coast is primarily imports, low-density goods, television sets and so forth, and many of those auto parts they important are low-density, so their experience on import containers is they are relatively light in weight and relatively rarely do they violate the weight laws.

Their exports consist of canned goods, forest products, chemicals of all kinds, which are dense, and are loaded to the max.

On the East Coast, it is pretty close—pretty much nearer to a balance, I believe. Imports of wine, quarry products, tile, beer, so forth. They tend to be heavy—not grossly overloaded, to the best of my knowledge, but they do tend to get heavy.

Similarly, East Coast exports are pretty much up there—probably the incidents—and this is a guess—incidence of East Coast exports being overloaded is probably lower than it is in California, on the West Coast.

Mr. ANDERSON. In other words, is there more overloading on the East Coast than on the West Coast?

Mr. LETTENEY. I would say probably not in terms of exports. There is probably more overloading imports on the East Coast than there is on the West Coast. There is sort of—just guesstimate.

Mr. ANDERSON. Mr. McEwen?

Mr. MCEWEN. Thank you, Mr. Chairman.

First of all, let me say this: On the interstate highways, we have scales on both sides of the interstate. If you come in there and you have more weight than the limit allows, they tell you to park it and work it out the best you can.

Can we not stick one at each port, and when a person comes in or comes out, they weigh it. If they are overweight coming in, they are fined, put in jail, hung? Or going out—you sit over there and park until they work it out.

Mr. LETTENEY. I have no problem with that at all. I don't understand what all the debate is about.

Mr. MCEWEN. Us farm boys ought to be able to do this in less than a day.

Mr. LETTENEY. Take for example New York, and what I am most familiar with. There are, I think, by installing scales at maybe six points around the harbor, they would cover it. And they could be operated by some—say, the port authority. One of the problems I discovered not long ago is the big squabble between the port authority police and the New York State Police over whose jurisdiction it is, and I suppose this exists in other ports as well.

Most ports, it would be relatively simple, relatively inexpensive to set up central weighing points to accomplish just this.

Mr. McEWEN. Can we put a sticker? A State patrolman who does his random stops, walks—checks his permits or whatever, and right here is the sticker, he doesn't have to fiddle with it, and weigh all the axles or anything else. The guy is done and if he doesn't have one, it is against the law, and he automatically gets a fine. That way, they don't drive around them, they drive to them.

Mr. LETTENEY. I would say it is probably not necessary to put a sticker on every one, because not every box, by any means, is overloaded.

Mr. McEWEN. Just the fact that you have been weighed.

Mr. LETTENEY. You have been weighed.

Mr. McEWEN. A sticker on the windshield. Can you tear it off, no problem? Take the serial number of the carrier and put the date and the driver, and it is good for 36 hours or 72 hours or whatever. I mean, I am just speculating, but I feel very uneasy about it, because I figure I have got to be missing something profound.

Mr. LETTENEY. I am surprised some of the port authorities haven't charged them a buck a weigh or something.

Mr. ANDERSON. That is an idea.

Ms. KOUKAL. With the differing State laws, though, if you have a State that accepts a higher weight container, all of the traffic is going to start moving to that State. I think you need to equal out that problem first.

Mr. LETTENEY. Several of us have stressed the need for uniformity in much of the States.

Mr. McEWEN. I don't understand. You are saying if the weight limits are lower in Illinois, they will ship to Illinois, instead of Los Angeles.

Ms. KOUKAL. It is a possibility.

Mr. McEWEN. At that point, I say that is out of my pay grade. That is up to the State Legislature to figure that. If they want to lose the business in California. This is—the dilemma is nobody is minding the store.

Mr. LETTENEY. I think you have the vehicle to resolve it in this Highway Trust Fund renewal. You get into an awful lot of complexities there, but this is a vehicle that can incorporate an awful lot of these.

Mr. McEWEN. Thank you.

Mr. ANDERSON. Do containers over a certain weight present problems for ocean carriers during the ocean leg of the transportation, or during the loading or unloading of the vessels? And if so, what efforts are made on your part to prevent the acceptance or tendering of such containers?

Mr. LETTENEY. They only become a problem for ocean transportation if they exceed their tested maximum gross weight. In the United States, that is regulated by OSHA. Well, the container is built according to a certain set of international standards. Forty-foot has a maximum gross weight of container and contents of 67,200 pounds.

A 20-foot, there are two basic weight limits, one of 44,800 pounds and another of 52,910. And if those are not exceeded, there are no maritime or terminal problems.

In the United States, every container is required to be weighed prior to its being loaded aboard a vessel. The purpose is to protect the safety of cranes and longshoremen, and this is pretty religiously followed. And they do detect containers that exceed those standard weight limits.

There are some containers that can carry higher container weights, and they are acceptable. On import containers, as the ship comes in, the manifest will be checked for containers which exceed those gross weights, but you still have to get them out of the ship.

In any event, this is pretty well regulated, so there is no real serious problem there.

Mr. **Anderson**. I wasn't quite clear as to the second part of my question, where I said, what efforts are made on your part to prevent the acceptance or tendering of such containers? What do you do?

Mr. **Letteney** Okay. Are we talking now in terms of containers which exceed maximum gross, they do not accept—excuse me.

Mr. **Anderson**. I am talking about containers over a certain weight present problems.

Mr. **Letteney**. If they exceed the highway weights. On exports, nothing.

Mr. **Anderson**. Nothing?

Mr. **Letteney**. Imports, it depends upon the particular line. Most lines that I know of will survey their manifests, will flag the containers which appear to exceed overloaded—rather, exceed highway weights. At that point, it depends on what the next movement is to be. If it belongs to a—or if the receiver will take custody at the terminal, he will tell the customer, "Hey, your container is overloaded and what are you going to do?"

The receiver, whether he is a manufacturer or warehouse or distributor, he then employs the trucker to pick it up at the terminal. A vast number of containers move into inland locations under steamship routing and payment. Those, again, vary from company to company.

Many companies will not move them if they are going to be responsible for the overweights. They will call the receiver and say, "Hey, you have got a heavy container here. What do you want to do with it?"

Mr. **Anderson**. Do ocean carriers reimburse truckers or any of the penalties incurred on movements which violate highway weight limits?

Mr. **Letteney**. Yes, they do.

Mr. **Anderson**. And if so, are these costs passed on to shippers?

Mr. **Letteney**. I can't answer that one, because I don't know, but yes, they do.

Mr. **Anderson**. So you do reimburse truckers for some of the penalties that are incurred?

Mr. **Letteney**. Yes.

Ms. **Koukal**. That also varies from company to company.

Mr. **Anderson**. And you don't know, either of you, if these costs are passed on to shippers?

Ms. **Koukal.** I wouldn't have any knowledge of this.

Mr. **Anderson.** FMC testimony described the use and WTRA petitions as in one sense being too narrow and in another overlybroad. Do you think a petition could be carefully crafted that would allow the FMC to resolve the problem of overweight container movements?

Mr. **Letteney.** Considering the subsequent attitudes, I guess not. I am sure that there is some attorney who could.

Mr. **Anderson.** Okay. That you already answered, and I didn't even ask you yet.

Mr. McEwen?

Mr. **McEwen.** No, you are doing fine. Go right ahead.

Mr. **Anderson.** Thank you for your presentation.

Mr. **Letteney.** Thank you, sir.

Mr. **Anderson.** Our last panel today includes Richard A. Staley, President of Richard A. Staley Consulting; Mr. Douglas L. Johnson, Freight Transportation Consultant; and Mr. Asaf Ashar, Group Manager of Ports, Ports and Waterways Institute, jointly sponsored by the Louisiana State University and George Washington University.

Mr. Staley, Mr. Johnson and Mr. Ashar, I ask you to raise your right hands.

[Witnesses sworn.]

Mr. **Anderson.** You may be seated. Before you begin, I would like to thank you for your patience and understanding. I am glad you could arrange your schedules for us today. I suppose we might as well start with Mr. Staley.

## TESTIMONY OF RICHARD A. STALEY, PRINCIPAL, RICHARD A. STALEY CONSULTING; DOUGLAS L. JOHNSON, FREIGHT TRANSPORTATION CONSULTANT; AND ASAF ASHAR, GROUP MANAGER OF PORTS, PORTS AND WATERWAYS INSTITUTE, LOUISIANA STATE UNIVERSITY AND GEORGE WASHINGTON UNIVERSITY

Mr. **Staley.** Thank you, Mr. Chairman.

First of all, I would like to say I am not representing any group or organization here today; I am active in the freight communities, second Chairman of the TRV, and also the ISO. I am not speaking for them today; I am speaking for myself strictly.

I have had about 40 years of transportation experience in freight transport, well over half of that in intermodal. My consultancy tries to concentrate on intermodal.

I am going to depart from my prepared text, which I am sure you gentlemen have, to say, in listening to all the witnesses here, and listening to this problem, reminds me of that old story, everything is out of step except John.

Only in the United States on U.S. highways are any of these containers "overweight." They are not overweight according to the International Standards Organization, ISO, which one of the earlier speakers referred to.

They are not out of scope as far as weight is concerned in Germany, France, England, in most cases.

It is a case of U.S. domestic highway restrictions being in conflict with the International Standards Organization's standard for containers to be certified for use in the international trade.

ISO standards are important. The ISO is the reason we can develop an American automobile tire that will fit a German car or fit a Japanese car.

That the freight can meet U.S. contents restrictions. All international standards certified containers, which is 99.9 percent of all international containers, are marked with the maximum gross weight. The maximum gross weight is a cargo plus the weight of the container itself.

Unfortunately, when that is loaded in the United States, it very often results in a container behind a tractor, which is in violation of the Federal weight limits. Not necessarily State weight limits, but Federal.

The two most common container sizes are 20-foot containers and 40s. It happens in both cases. If you load to the full certified weight of that container by ISO rules already marked on the container, you are in violation of U.S. highway rules, either axle or gross or both.

You take a 30—container certified for 30 metric tons, which is maximum standard ISO container, that is about 67,000 pounds, put it on a 6,000 pounds chassis, you can see what happens, we are over 80,000 pounds.

A 20-foot container, we are talking about 24 metric tons. He is so obviously overweight for a short container that while the story is one of my French colleagues who says Dick, wait until we send 44 tons of cognac in the United States and try to get you to unload some of that weight before you take it on the highway. You have a lot of drunk longshoremen. What can I say?

We also have cases of pure overweight containers by intent or by ignorance. One of the famous stories, I can give it, of the Indian South Continent, 20-foot container of manhole covers loaded to the roof. They couldn't get out of the ship.

It broke the cables on the cranes. The weight was 85,000 pounds. The whole thing is that the United States highway weights are lower than those in many other States, and as for containers, they are lower than the certified weight of the container itself as certified by ISO. That is the reason I started out saying it is the old idea, everyone is out of step except John. We are John.

Does this hurt us? Does it affect us? Yes, it does. We have American companies that cannot compete in the international market for freight sales, because they cannot deliver as much in a container as France or Germany or England, so when they have a contract and the contracts will include the freight cost, they can't compete with those countries.

Conversely, goods coming in from foreign countries, this container was legally loaded in France, the French highway laws—it does happen, it was driven across to Denmark, it was legal in Denmark. The other direction, it was driven to Germany. It was legal in Germany. Legal under the ISO, which means it could be legally insured for marine use. That is important to marine carriers.

If it is overloaded, their insurance is null and void. That is a slight exaggeration, but not much.

This container is completely legal until it hits the United States highway. Not only the United States highways, either. It could go in a port area and some States might permit it. Referred to earlier both containers, and the Port of New York has done a lot of work on this—do not move more than 110 miles from the port.

I would say it is closer than 60 miles. That container is proceeding on New York City highways with trucks that weight 110,000 pounds. Garbage trucks that weight 100,000 pounds, dump trucks that weight 100,000 pounds. He is not alone. This is true in any city in this country. They very seldom enforce weight limits in urban areas for the simple reason if they did, they couldn't take it. They would rather go overload in urban areas.

Since containers are carried to some of the other small towns on a rail, you can get heavyweight containers well outside the urban system. Some actually go highway all the way. Very few, very few.

I have proposed one solution here which may sound a little weird, but I am going to try it on the gentlemen in the group. We were talking about what was referred to as an instrument of international trade, that is what the container is legally called, instrument of international trade.

As long as it complies with certain rules on being domesticated or grounded, not used for internal use in the United States except for repositioning, it is exempt from U.S. domestic laws as far as taxes. Add taxes, sales taxes, import duties, it is the same thing that applies to aircraft for France and Germany. Ships from India, Germany, they are instruments of international trade.

We get the same rules they do, they get the same rules we do. Those vehicles are exempt from all domestic law as long as they don't operate domestically.

Now, what I am suggesting, a container operating in international trade be exempted from U.S. highway limits. Axle weight limits, no? The axle weights—which we have known for years it is the axle weights that control the highway damage. What I am suggesting is we limit our container weights, international containers, export and import only to the ISO regulations as to the weight on the container.

This could have a number of effects. The exemption would not be available for domestic movements. Otherwise, container movements from New York to Los Angeles and New Orleans to Des Moines, that is all domestic.

Containers with international origin or destination would be exempt from U.S. gross weight limits under the theory of instrument of international trade.

Some of the advantages would include international intermodal containers are so-called instrument of international trade and they should be so treated. It would impose America's competitive structure worldwide.

We send out of this country a lot of light containers. We like high containers, wide containers, long containers. In excess of international limits. Those limits are being conformed to afford 50-foot, 9.5 feet wide, 9.5, even 10 feet high. A lot of foreign containers do not like these larger containers, they can't handle them, particularly in Europe. They have narrow roadways and low clearances.

However, the Europeans and Far Eastern countries are accepting the large containers. They want to know why we can't accept the heavy containers. It is quid pro quo. By exempting these heavier containers in this country, we could improve our competitive structure and get into more acceptance for the larger light-weight containers we send out.

We are a serious international partner in import and export trade, and we should realize that. When we say you can't bring our heavyweight containers in here, but you have to take our large containers, there is no question about how much give and how much take this country has.

Another advantage, it would end the current evasive strategies of overloading domestic containers. Right now, a lot of overloaded containers showing up in our highways are domestic destination, trying to take advantage of ISO restraints. Is that goods going out of the country or coming from out of the country? No, that is all domestic.

Now, another advantage I see is it would directly aid in influencing at least one of the action strategies in the DOT's resent study of national transportation policy. Now, that statement: "Increase efforts to harmonize international standards for transportation equipment and international trade and transportation procedures."

That was one of the recommendations of the DOT statement of national transportation policy just released two months ago. I think this would do it or help do it. Another thing that would provide a fair solution to this problem is the present hearings. Is there a way out of this?

These containers all carrying ISO weight labels, saying what the ISO certified weight of that container is. It is very easy to enforce. If it exceeds ISO, he is in violation. You don't have to weigh the container; you know what he can handle, 20 and 40-foot and over. Thirty-foot containers are almost non-existent, so is 10-foot. In fact, 10-foot is no longer standard.

Lastly, by providing another incentive to solutions for all heavy container problems—this might be a way and I think would be a way of suiting up the idea of trader vehicle and other proposals that would spread axle weights out.

We hear now of putting 20-foot container on 40-foot chassis. Engineering-wise, that is a lousy practice. It is very difficult, almost impossible to unload without moving that container.

How are you going to get to the rear door of the container over 10 feet of chassis, you can't do it. There has been some extended chassis work, very hard to load and unload. As an engineer, I would say it is a lousy way of doing things. It is a good way to ask for a broken chassis.

Gentlemen, any questions, I would thank you.

[The prepared statement of Mr. Staley appears on p. 449.]

Mr. **ANDERSON**. Mr. Douglas Johnson.

Mr. **JOHNSON**. You already have my statement, so I don't want to simply repeat it, but let me address the issue of the validity of FHWA PIERS study, it has been under question. It is not an official and defensive study, nevertheless it seems to me it is the very best data we have, and we could not improve on it without considerable expenditures, and it is hardly worth it.

The study has been criticized as being incomplete in the sense it may not cover all important container movements. When I talked to the PIERS people long before they began this, inquiring about that very issue, they assured me their procedures cover all 47 ports which have any significant container movements at all, both in and out, and so far as I can see, they are picking up every single container that counts, every single container movement that counts.

Secondly, the study has been considered to be flawed in its sampling procedure because they counted only containers in certain number of one-day-per-month-per-year. It seems to me that is a very accurate way of getting a decent random sample. I have no problem with the study in that sense.

I would make the point, when I was investigating this to conduct a similar study, I found that as many as perhaps 25 percent of the containers came in on bills of lading, which there were multiple container shipments, but only one weight is listed, and often it was unclear if that was the weight of the entire shipment or sample weight of one of the containers or however.

I don't know how the PIERS study handled that problem. If it were repeated that problem should be addressed, but I don't think it is a major source of error in the study at present.

The study has also been criticized on the basis that these are really only potentially overweight containers, they may not in fact travel on the highway, that many of them arrive at the ports, having come by rail. This is true, but in almost every case, with a few exceptions of some Midwestern automobile manufacturing plants that do receive direct rail shipments, every single container that lands on the truck does not to be transported at some point. It may not be a very long movement in its journey, but it will hit the highway at some point. There is very little on-dock transfer of containers directly to or from ships.

The study has also been criticized—and I think the main useful criticism of the study, that is containers are only potentially overweight because they can be moved quite legally under various State permits or by utilizing specialized equipment.

This is true, but this is the problem. The State permitting is not uniform, and therefore, when one State—for instance, the State of Maryland allows overweight containers move through Maryland when they leave the State of Maryland, they are immediately overweight as far as Pennsylvania or Virginia is concerned.

So, we have a situation here where there is not uniformity throughout the country. Secondly, the contention that these containers can be moved by using specialized equipment is also obviously true, but this equipment is at least so far not readily available, and is very expensive. And therefore, very few trucking firms, very few shippers are willing to pay for the use of that better equipment.

So, on these counts, it seems to me that FHWA PIERS study outlined the problem as well as is needed to be outlined. We know what the problem is, and it seems to me it is now necessary to address the solution of the problem.

I would stress a couple of points. One, much of the testimony this morning has spoken directly to what to do about import boxes. It is apparent most of the problem deals with exports. Weighing the export boxes at the pier is after the problem has occurred. They have moved over the highway and damaged roads.

For that reason, I think whatever solution is proposed must deal with the weight issue at the point of origin in the United States. For imports, that is the port, but for exports, that is the shippers.

Secondly, I would stress that any solution——

Mr. McEwen. Mr. Johnson, if a man is being hired to take a shipment from the Procter and Gamble facility in Sacramento to the Port of Long Beach and he knows he is going to drive over a scale to get into the port, what are the chances of him doing this?

Mr. Johnson. You are saying a scale outside the port?

Mr. McEwen. No.

Mr. Johnson. If it is in the port, it does no good. The journey has already occurred. The road damage has already occurred.

Mr. McEwen. These people are not foolish. Here is a truck load for you. It is three times the weight.

When you get there, they will slap you with a fine, 60 days and no driving and impound your truck for 30 days. Will you haul this for me?

You are saying he will haul it. When he gets there, he will say the damage is all done, but you are going to take my truck and everything.

He is not going to do it if the penalty is there.

Mr. Johnson. I agree with you if the penalty is there.

Mr. McEwen. We are talking about having everybody weigh going in and or out.

Mr. Johnson. With penalties?

Mr. McEwen. Right now this guy in his pick up truck is running up and down the highway with scales hoping to catch these people.

It makes sense to me if we are all going through one gate, you put the scales right there and you get them coming and going. We do it on the interstate system.

Mr. Johnson. Let me address your question.

It is a valid point. Exported boxes are currently weighed at most ports before they are loaded on the ship. This is to satisfy OSHA requirements.

This is not to satisfy highway requirements. So the weighs are recorded, may exceed the highway rate and thee is no penalty.

If you institute a penalty for an overweight as far as the highway is concerned, then I would agree with you. But my point is simply that you have to pay attention to export as equally as much as imports.

As I started to say, the only criteria I would stress for any kind of solution is that it meet three major requirements.

One that deals with both exports and imports. Two, that it apply equally to all segments of the industry. That is to say we cannot single out the truckers to be penalized, nor shippers, nor ocean carriers.

All must be involved because it is a problem that all are involved in.

Thirdly, and most important, any solution has got to be applied uniformly throughout the country. The point is made that some states will quite readily see to the request of their ports to grant special exemptions for containers moving into or out of their ports.

If this is allowed, the traffic will tend to gravitate toward those ports to the detriment of other ports offering more strict standards.

This implies the standard does have to be federally based or federally sanctioned in some way.

I would be happy to answer any questions you might have.

[The prepared statement of Mr. Johnson appears on p. 418.]

Mr. ANDERSON. Mr. Ashar?

Mr. ASHAR. Thank you, I am glad to be the last one. I will try to put some perspective on the summary.

What we have here, as I counted, six major issues. We have safety, infrastructure, enforceability, economics, technology and geology.

Safety, we have the extra load, there is a problem on the brakes, on the structure. But we know on the other end the breach formula is not for safety. There is a big question mark for safety.

Another issue here is if we allow less per box, we obviously need more trucks. If you look at weight, the box is only 40 and the box or the chassis or so is another 40.

We induce more weights on our highways. Then what we are doing here is probably very insignificant amount of traffic. We have eight percent, take one third of it, maybe 2 percent—it is an insignificant amount of traffic.

On the safety issue, we all know that links is probably more than weight. If the links is going higher and higher, and longer and longer, here is a point to put on the legislation. Here is the issue of safety.

The issue of infrastructure, again, the idea is extra load damages bridges. We know the damage is not because of the extra load, but because of the protective uses of the bridge.

For example, if you have every day hundreds of trucks with extra load, we will, there might be some damage.

Again, we are talking in terms of very insignificant amount of traffic. So the damage is, again, there is a need for question mark.

Another thing is the number of trucks. If we induce more weight by cutting on the weight of the boxes, we have probably more damage than we want to avoid.

The third is the issue of GVW, gross vehicle weight. We know other countries allow it.

If it is allowed in Europe and other countries, probably the damage is not as high.

Now the issue of enforceability. Obviously we have to divide into federal intra-state and the state. Enforceability obviously costs. We have the cost of scales, of weighing, the practices of moonlighting.

You won't man all the weighing scales 24 hours. Then you have the cost of delays. You have the trucker to pull aside to weigh and the argumentation and so on.

Third, responsibility. I am talking issue of responsibility. You have the shipper, the forwarder, the dispatcher, the trucker. Who exactly is to pin down here?

Fourth, you have the issue of the agency, what agency?

Fifth, this is probably a very important point. We have weight limits, for example, OSHA, whose limits are respected. Nobody in his right mind will bring a container which weighs more than 30 tons or 67,200 to report.

The problem is not to weigh or to enforce weight. The weight is already enforced in the industry, but it is a different weight. So we have a system. Every container is weighed. The information is known.

The issue of economics, box pricing. We have guys from the shipping lines perhaps trying to get more boxes. Box and containerization is natural. The cost of production of the transportation is per box.

You buy a vessel by the boxes, by the space. Port counts geographically by boxes.

The stevedore charges you only by boxes. This is a natural unit of containerization. This is why we went to containerization. Every time you allow somebody to look inside the box to say, hey, guy, you have a very expensive materials, say you have beer or whisky, we charge you more, we give them a monopolistic power.

So here is a simple case. Nobody is looking at your pockets suggesting that you bring expensive materials, you should pay more.

A box is a box and this is a natural way of charging. The same way, by the way, charging other modes of transportation in other industries and so on.

Now the issue of who is going to suffer? We heard the sufferer will be obviously be the agricultural exporters and especially recycled materials.

For recycled materials total transportation savings is not that significant. Again, it is a small amount of boxes.

Obviously, there is a shipping line of charging, the money they lose in the wastepaper on other commodities. In terms of this wastepaper as recycled materials, they are going to be hurt.

It is 25 percent of the cost of transportation which can make or break a deal. Then there is spill-over costs. What we do with the recycled paper, if we cannot export it to Japan or sell it to Korea is there will be other costs internally to haul, to process, and so on. That is the issue of economics.

The issue of technology. Obviously, the box was designed overweight.

ISO designed it to 67,200, they didn't design it to the highway practices. There is an inter-modal gap or overweight gap. All the modes of transportation except for some, say, couple of miles there is a gap of overweight.

As you all know, there is a tendency now to put weigh heads in the terminal at the port so the gap is going to be closed.

The special chassis, there is the issue of cost, safety, very important, very hard to drive this extra chassis units, some special drivers and so on, and the problem of match.

You have to match all the boxes to the chassis to classify.

Last issue of geography. We have to define three regions here.

We can first talk about corridors, for example, from the terminal to the rail head, which overweight containers will be allowed. For example, if you have a container which goes, say, to Chicago and the distance between here and Long Beach is 4.4 miles between the terminal and the rail head, on this 4.4 miles there is a corridor which the container can travel.

Or if you have an overweight container which is created by a CFS which is four miles away from the port, you want to allow these four miles of agricultural export to go from it to the port. Certain corridors.

Another issue is to expand it into a port zone, we heard about 50 or 100 miles, whereby containers, especially export, I would say, will be alluded to go over this state. Third is the entire system or most of the system.

Finally, solutions. As I see it, there are two types of solutions. There is a short-term and a long-term. Short term obviously, it looks like we have all the resolutions required. State law and federal law are being violated.

The problem is exposure, as you suggested before. Exposure is very easy because information is known. For example, all the containers are weighed.

All the containers are manifested. Nobody is going to accept containers. The problem is just exposure.

The driver knows the container is overweight. If you have economic incentives, it is his problem, it is simple.

Long term is much more complicated. We are going to probably relax some regulations. Here we have to do what is called cost benefit analysis.

The cost of the supposedly extra safety extra infrastructure, transportation saving, enforceability, what would be the cost of it. It is a little bit complicated, a lot of shaded areas.

Last point, it looks as if the only pressing issue here is whatever we heard is what I call the poor driver syndrome. The only problem that people are somewhat pinpointing, here is a guy in the middle of the night who came to the port and his wife and 10 kids are hungry and he has to carry his containers.

I doubt this is the situation. People are not ignorant. I talked to several terminals. I have my own experience in terminals. Everybody knows exactly what is the weight of the container.

If some fellow is loading apples in the eastern part of Washington in two containers and he puts more than the weight he knows because he knows how much cases and what is the weight of the cases, the problem is known.

Thank you very much.

[The prepared statement of Mr. Ashar appears on p. 389.]

Mr. ANDERSON. I have some questions for all three of you.

First, can we assess what part of the total problem created by overweight vehicles is attributable to the movement of overweight containers?

If we cannot, are there steps that can be taken to get a better handle on the scope of the problem or is a follow-up to the original FHWA PIERS study our only resort?

Mr. ASHAR. I can address it. One simple way of doing it, it can be done, is just to take the statistics from the ports. For example, you can get—every container has a document.

It is written there. Now, there is a TAR, which is a document whereby the equipment being given, so you know what is the weight on the chassis. You don't have to weigh anything. You just have to have three numbers.

On the truck you have the weight of the truck. On the chassis, you have the weight of the chassis.

The container is known. You know the destination and you can assume how will the container go. Everything is known. It is just to collect.

Mr. **Johnson**. I must say that I really don't agree with that. There are a lot of, especially—well, I think it happens on both imports and export boxes on which the weight is not known by anybody, including the shipper.

Foreign shippers, especially, just because they are not concerned with strict weight limits, the question doesn't even arise in their mind as to what the weight of a box is. They simply load what they have always loaded and send it off.

The ship line doesn't care because unless it is exceedingly overweight, it can make the ocean passage without any problem. Or it doesn't mind because the cranes are presently able to handle much heavier weights, much, much heavier weights.

The problem only arises when the truck leaves the ports in many cases. In many cases the trucker is totally ignorant of the weight, as is everybody else. There is a weight listed, not always, sometimes listed on the manifest, but often there is a nominal figure where there has been no weighing at any port on the entire line.

The same thing happens with exports probably less often. American shippers are much more aware of the weight laws and therefore try to observe them. But, sometimes they try to cheat. So I don't agree that the weights are that known or known with that much accuracy.

Mr. **Ashar**. Can I make comments?

If you are familiar with ocean transportation, there is a famous problem of stability. You have to know the weight of the container before you put it on a vessel. You have to do a calculation.

No chief-mate, no captain will sign a manifest without knowing the weight of the container. Perhaps there is some third country world or whatever, but in the Far East, with any organized country, the weight of the container which is being loaded on the vessel must be known.

It may be 1,000 pounds here and there, but obviously—by the way, there is a lot of problem with stability.

You cannot put in the container more or the container will fall apart. It is known to some accuracy.

There are violators obviously, people who violate the laws. In general it is known.

Mr. **Anderson**. Mr. Staley?

Mr. **Staley**. Mr. Chairman, we are talking about two different things here. The container itself in it certified weight is container, plus load.

You have a refrigerator container, it weighs lower empty than does a dry-fry container. A refrigerator truck weighs more than a standard trailer.

The ISO rules and the rules of loading is the total weight of the container. That is the weight of the box plus the load. Chassis are fairly standard. You are going to get 6,000 pounds, roughly, on a 40-foot chassis. It will vary a few hundred pounds, not much. You know, max weight, legal weight certified is the container of the chassis.

Surprisingly, one of the great variations is the tractor. A tractor can hold anywhere from 9,000 to almost 20,000 pounds.

The weight of the container and chassis and a 9,000 pound tractor could stay inside of the federal and the state laws. That same trailer and same container, the 20,000 pound tractor is way overweight. You have got a variation there that just depends on who is in line.

Most tractors used in land operations of containers are second and third and road tractors. They are short distances. They are basically used equipment.

Very few companies buy new tractors that I know of for container operations. They like to get short-nose tractors, very short distances because they are more maneuverable, easier to handle inside of a port area.

That sounds good. They can still weigh a lot more than you want them to. There are short nose tractors that weight close to 20,000 pounds.

You take a container that weighs 37,000 pounds, and a 7,000 pound chassis. That is 44,000 pounds. A 16,000 pound chassis, 16,000 pound tractor is one thing. A 6,000 pound chassis is another thing.

A lot of the weight problems, Mr. Chairman, are occurring with the 20-foot containers rather than the 40's. The 20-foot high density commodities go in 20-foot containers, for example, liquids, liquor, wines, certain chemicals, exports of dry chemicals and some liquors.

Here you are getting high weights at short distances. That is where you get a lot of problems.

Mr. **Anderson**. The FMC stated in its denial of the two petitions that they have not provided a supportable or appropriate basis for reaction.

Can this situation be remedied with a modified PIERS study? If so, what provisions would you suggest?

Mr. **Johnson**. I must agree with Mr. Letteney that the FMC is not in the mood to accept any petition. One could be drawn up to meet their stated objections, but their stated objections are not their main objections.

They don't want to open up a can of worms. I think some other solution or approach will have to be taken.

Mr. **Staley**. I would agree. I am going to be very brief here. I am not trying to second guess the Maritime Commission. Since both costs of containers are unit driven, they could theoretically open themselves up to a charge if they told carriers to start charging on a weight basis, because that is not the basis that the costs are incurred. There is a legal question here.

Would a unit or a weight base charge be reflective of the actual cost involved?

I could see their problem. It is a nasty one.

Mr. **Ashar**. I happen to believe the FMC is not an agency that should regulate domestic trucking. Rather that we have the same containers used also for domestic purposes.

For example, you can haul on the way back with empty containers from Chicago to Long Beach some domestic stuff which will be overweight stuff.

Second, all these domestic containers coming now into play. It seems as if domestic transportation, which is the issue is not whether the FMC should provide a ruling. Why single out containers?

Mr. ANDERSON. What portion of the 33 percent of potentially overweight containers reported in the PIERS Study will you estimate inadvertently versus intentionally overloaded?

Mr. JOHNSON. I don't think we have a handle on that.

Mr. ANDERSON. You don't think——

Mr. ASHAR. I have talked to seafarers on the West Coast. I understood in most cases it is not.

Mr. ANDERSON. Not intentionally?

Mr. ASHAR. It is know, so it is intentional.

Mr. ANDERSON. Would the experience be for imports versus exports and also West Coast versus East Coast?

Mr. STALEY. I would say yes to the exports and imports because this overweight is not contemplated as an overweight. In other words, a loader of a container in Japan, Korea, London, does not look at the container as overloaded.

He is inside the ISO loads, highway loads of his own country. I would say on import containers, about 10 or 15 percent are intentional. On export containers, I would say 60 percent.

Mr. ANDERSON. Could you estimate what percent of the overweight container movements by motor carriers are within 100 miles of the port of the terminal they service?

Mr. JOHNSON. There was a study which I reported on in my statement here done in 1986, in connection with the merger of Sealand and CSX, on which this question was examined.

I think they found the vast majority were very close to the ports. Let me see if I can find it.

I don't remember the details. But the vast majority coming through the New York port authorities, this is where the study was focused, went within, I think, 110 miles of the port. We were talking here about imported only.

This is also true, I think, of imports coming into Southern California with the exception of those that do go by double staff and go way inland. By truck movement, I can't say 90 percent, but the vast majority are certainly within a very short distance from the port. That is true.

In the Eastern States, that distance may never let us cross state lines.

Mr. STALEY. Gulf Coast the same way.

Mr. ASHAR. With your permission, you have to look at the nature of the cargo. If you look at the export, most of the heavy load is either wastepaper which is generated at the port area itself.

Nobody is going to haul wastepaper from Chicago to Japan.

You have to look at the agricultural export which is originated at the place of the farming. For example, if you look at California or if you look at Washington, it depends where it is.

If it is apples, then it is probably 150 miles. There are commodities which are generated. Or if it is lumber, it is generated in Oregon somewhere.

The place of generation of the export except for wastepaper which is in the town usually.

**Mr. Anderson.** Do you have contact with the International Maritime Organization and provide input into its considerations of a proposal that would require the actual weight of the container to appear on shipping documents?

How does the IMO propose to enforce such a provision?

**Mr. Staley.** There are several proposals on this. One proposal was to require part of the documentation. Although it is there, the document in total is no good.

It is a great idea, but it is very hard to enforce, however. That was one of the suggestions.

There is also a proposal right now before the ISO to require certain data to be transmitted electronically. All containers would be loaded on a given ship, which would include the weight.

However, using that proposal does not get specific on exactly which weight—in other words, a highly detailed down to the last kilogram, or within the nearest 10,000 kilograms or 5000. One of the things missing from that document in the draft so far is how detailed the weight is.

Some of the ship owners don't need weights that detailed. They would like to know if it is 20,000 kilos or 25. They don't have to know if it is 24,996. That kind of precision is ridiculous.

We do know when you start translating kilograms into pounds that between 25,000 and 26,000, there is a case of being overweight and not overweight on U.S. highways.

These kinds of things the IMO, they are playing with it. They don't know exactly how to do it yet.

**Mr. Anderson.** You may have answered my next question. This is only being considered now. What has been the practice in the past?

**Mr. Staley.** Very little, except for very overweight, very heavy containers. Containers that were very heavy or due to their design or their contents should not be loaded in the bow. The worst place for the container is the bow of the ship on deck in the wintertime in the North Sea. That is where all the testing is based on.

Very heavy container or container with delicate goods is traditionally so marked and the shipmaster so informed. Other than that, frankly, nothing.

Another thing, they don't like to put empty containers on deck because they are not too stable. An empty 40-footer. Of course, no one wants to carry empty containers anyhow.

**Mr. Ashar.** I want to point to the same thing. Every manifest, if you look at the documentation that the ship has to carry, you have a ship manifest which contains also the container list. Every container being loaded in an organized country has a load list.

If you look at manifest, the waste is there. Probably not to the last pound, but the weight is there.

**Mr. Anderson.** Mr. Johnson?

**Mr. Johnson.** I would just repeat in at least 25 percent of the cases the weight is the weight of multiple containers because there may be 2 to 200 containers in a shipment.

You have a gross weight which is often a guess. It is not an accurate weight.

**Mr. Anderson.** Thank you very much.

Mr. McEwen?

Mr. McEWEN. As I understood your testimony, you say the ISO restrictions are so divergent that really we can't enforce our own? Is that the message you were trying to give us, Mr. Staley?

Mr. STALEY. I wouldn't call them divergent. The ISO restrictions on weight are on the container. They are the maximum testable, loadable weight of that container, container and load.

Oftentimes they will result in a container on the U.S. highway that exceeds our 80,000 weight limit. There are several series of these containers. Twenty-foot containers, 30-footers, 44-footers and soon 50-foot containers.

They will have a container gross weight today or in the future of up to 44,000 pounds or more.

Mr. McEWEN. Is it really unfair to say that has nothing to do with my life? Suppose they make that container that can load 200,000 billion pounds? The point is we have got restrictions that say 80,000 pounds.

When you load it up, I don't care how rigid the ISO container is, it really doesn't have anything to do with my life. I say that if you are going to haul something and if you want to make it supersafe and it can haul lots of pounds, fine.

But it is not going to move out of that port unless it is 80,000 pounds or below. Is that not correct?

Mr. STALEY. That is fine inside the United States. You take a shipper in any other country, he is going to look at that container twice and say it can weigh so much. That is what I will load to.

Mr. McEWEN. That is fine. When you get into the port, you are not going to drive it down the highway near the wife and three kids in a van at that weight.

Just because some guy in Rotterdam decided I can make the toughest, heaviest, most powerful container in the world. Therefore, it automatically ought to be given carte blanche to be hauled in America. If he wants to ship it here like that, that is fine.

Before you take it on the highway you are going to break it down or do something if you are going to put up with that capacity.

Mr. STALEY. I agree. It is very difficult to do.

Mr. McEWEN. At that point Mr. Shipper is going to have to put his little brain cells together and figure out that once it gets there some American enforcement agency is not going to allow me to move this all in one package to West Virginia.

Therefore, I am going to have to hire some street corner card shark to figure out how to fix this thing for me. He will take that into consideration in his packaging.

Mr. STALEY. The first thing he is going to do is going to go to his own authorities in the Netherlands and say we will land these 45-foot, nine-and-a-half-foot high, containers from the U.S. in our country?

Mr. McEWEN. We are not prohibiting anything. He can ship it anyway he wants. It is the person who made the product and who is hiring, having it done.

Let's say a fellow is selling Panasonic radios and some guy says I can make the toughest, meanest container in the world. You can ship 10 billion of these things in one container.

Then Mr. Panasonic is going to say once I get them there, what do I have to do? At that point you have to break them down into three or four boxes.

Then you are not doing me a whole lot of favor then. I will take this here. That is not a government decision. It is a marketing decision.

It is a decision that he says I want to get it delivered to my customer in the quickest, easiest manner. There is nothing in restraint of trade at all involved in that.

Mr. STALEY. That would be great, sir. If we have a user, the other carriers would accept a container that was over ISO standards, the port authority would say no our cranes won't handle it. The ship owner says our guys won't handle it. The insurer will say it is over ISO. I won't take it.

Mr. JOHNSON. I think the other point here is that the more boxes are required for imports, the higher the cost to the American consumer. That is, you know, we have tried to——

Mr. MCEWEN. For the TV set. Not for the broken backs and broken highways and broken bridges.

Mr. LETTENEY. If I may inject something here. I called my office a few minutes ago. My secretary received a call from the Commerce Commission. They want to know why an ocean carrier could instruct a shipper of the United States as to the limitations of the cargo that he could put in that container.

In other words, the ocean carrier said no, you can't load it up to the full allowable weight. You have to load it to the highway weight.

The Interstate Commerce Commission thinks this is discrimination or something. They are obviously uninformed of the problem.

Mr. MCEWEN. It would appear that everyone is allowed to weigh it. Everyone is allowed to contain it, everyone is allowed to package it, everyone is allowed to do everything except once it gets to American highways. At that point all hands are off. We can't weigh it, trace it, move it.

It is an impossibility. There is nothing we can do. You have got to break seals and you have got to weigh it and suddenly you explode into a myriad of impossible dilemmas. The old ship captain says he wants to know how much it weighs. The crane operator wants to know how sturdy that container is.

The guy moving it out of the dock wants to know.

My conclusion is that it is not nearly as difficult as is being portrayed here. It can easily be handled because we will do what everybody else does up and down the line. That is you don't tear up your own facility when you are packaging it.

You don't tear up the transportation facilities. What we have to say is you don't tear up the highways and indanger safety, as well, once you get here.

Mr. ANDERSON. Thank you very much.

[Subsequent to the hearing, additional questions were submitted to Mr. Staley by the subcommittee. The questions and responses follow:]

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October 4, 1990

Mr. Richard A. Staley
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Dear Mr. Staley:

We would like to take this opportunity to thank you for helping make our hearing on "overweight containers" a success. Your testimony and the points raised in response to our questions provided very important input into our deliberations.

We would also like you to respond, for the record, to several questions suggested by testimony subsequent to your appearance:

1. What is your response to the comments in the recent FMC petitions, indicating that ocean carriers are interested in the overweight container problem because they want to carry greater numbers of containers, and that the abolition of per container rates was proposed to achieve higher revenues?

2. Are there economic factors, other than per container rates, that might encourage overloading of containers?

3. Are U.S. exporters typically aware of highway weight limits at destination points in Europe or Asia? Is the situation the same for those who send goods to the U.S.?

4. What percentage of chassis, would you estimate, currently have maximum allowable gross vehicle weights (GVWs) indicated on them?

5. FMC testimony described the SEUSA and TWRA petitions as in one sense being too narrow and in another overly broad. Do you

Mr. Richard A. Staley
October 4, 1990
Page Two

think a petition could be carefully crafted that would allow the FMC to resolve the problem of overweight container movements?

We look forward to receiving your responses. Again, thank you for participating. We think these efforts will go a long way towards resolving this very important issue.

Sincerely,

Glenn M. Anderson

BOB McEWEN
Ranking Republican Member
Subcommittee on
Investigations and Oversight

GLENN M. ANDERSON
Chairman
Subcommittee on
Investigations and Oversight

GMA/BM:rt/lm

RICHARD A STALEY CONSULTING
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our #ALL-77

October 16, 1990

Hon. Glenn M. Anderson
& Hon. Bob McEwan
Subcommittee on Investigations
& Oversight
Committee on Public Works
& Transportation
U.S. House of Representatives
586 Ford Building
Washington, DC 20515

Gentlemen:

Your letter and request of October 4th has just arrived here, and we hasten to respond immediately. It was a pleasure and honor to be able to testify before your subcommittee with regard to heavier intermodal freight containers.

For simplicity sake, I shall endeavor to respond to your six questions by number -- and in the order in which these were posed.

1.
Ocean carriers are, of course, restrained as to the number of containers they may carry by the physical size of the ship involved. In fact, this rather than individual container weights --or even total weight-- is the only factor limiting ship carriage. Thus as long as a container is within its certified (ISO) weight, weight per se has no bearing on ocean carriege. International competitive forces would, I believe, militate against other than per container rates internationally.

2.
One must here, I feel, differentiate between overloading as defined internationally and overloading based solely on low limits in the USA. Actual overloading (beyond rated ISO limits) can be counterproductive in terms of damage and insurability. However, economics do provide the only "justification" for such overloadings --both in terms of container rates and in terms of international competitive forces

3.
Briefly, no. The obverse is also true vis-a-vis foreign shippers.

4.
This is most difficult to estimate simply because chassis are usually

The property of shipping lines, leasing companies or port organizations. These entities worldwide are only interested that a container chassis "fit" the containers it is to carry --by meeting ISO specifications and standards. Doing this, the chassis users really need no additional information as to weight-bearing ability. etc. Probably only some 10% or less of the total US fleet of container chassis are operated as open lease units. These, for liability insurance reasons, are most likely to carry a maximum weight label.

5.
Frankly, I do not believe that the FMC really wants to arbitrate, or enforce, strictly United States highway limits on container weights. The FMC is maritime only and probably feels that highway weight limits are outside its jurisdiction or even expertise -- just as maritime matters are outside the jurisdiction of the FHWA. Moreover, the FMC must also consider its role in the international arena where U.S. highway weight limits do not apply.

These are my own, brief, responses to your inquiry. As I noted in my testimony. "overweight" containers are most often within the international certification limits, and violate American gross &/or axle highway limits (and then in only some U.S. jurisdictions) when they operate over our public highways. It is still my personal belief that such artificial overweight situation may be a violation of international protocols as to instruments of international trade --and can be best accommodated through permits for strictly international import and export units.

Again, it was a pleasure to cooperate with your committee and if I may be of any further aid, please call upon me.

ras/sm

Sincerely,

Richard A. Staley
Principal

# PREPARED STATEMENTS OF WITNESSES

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## OVERWEIGHT CONTAINERS
## TESTIMONY FOR THE HOUSE COMMITTEE ON PUBLIC WORKS

Asaf Ashar
Research Associate

June 28, 1990

A. Ashar, Ports & Waterways Institute

## OVERWEIGHT CONTAINERS

## A TESTIMONY FOR THE HOUSE COMMITTEE ON PUBLIC WORKS

### 1. FMC Petitions

The requested ruling was problematic in several areas:

(a) **Jurisdiction**: the ruling's main concern was domestic trucking. Trucking of containers and trailers are essentially identical, why set different ruling?

(b) **Economics**: the ruling applied to a complex economic relationships which requires careful analysis (which hasn't been conducted). It had a potential of substantially hurting U.S. exporters and consumers.

(c) **Enforceability**: the ruling required foreign shippers and consolidators to abide by U.S. domestic trucking regulations.

(d) **Effectiveness**: the proposed rate banning and/or limiting container weight did not relate directly to axle weight and bridge formula.

### 2. FHA Analysis

(a) The analysis was very preliminary but provided some indication of the magnitude of the problem.

(b) The analysis should be **expanded** to include:

- actual combination (box, chassis and tractor) weight and axle weight according to type of chassis in use;

- actual routing by type of road in use (local or interstate), and by continuing mode of transport (truck/rail/barge).

### 3. Current Transportation/Economic Factors

(a) The so-called overweight problem is a "natural" trend, inherent in box-based containerization. Better utilization of box space improves the overall system productivity. The boxes are **not** overweight for the shipping and rail systems (as long as do not exceed the internationally-recognized maximum structural strength); they are overweight only by U.S. trucking standards.

(b) Box rates on ocean freight induce but are not the primary reason for the overweight situation. Overweight boxes in the ocean and rail leg are expected to stay even in case of obeying over-the-road weight limits (by restuffing in ports).

(c) Box rates are expected to grow. Box pricing accurately reflects the production process of the involved transport system which is insensitive to a large extent to the weight or content of boxes. There is a similar tendency to "box" domestic, surface rate, or to charge a flat fee per truck-mile.

(d) A companion long-term trend is to "close the intermodal gap," or bringing the railhead into port. This efficient arrangement avoids overweight situation.

## 4. Possible Solution

In the short term there is an immediate need to "surface" and document the situation by:

(a) Adding data on Gross Vehicle Weight to current shipping documentation. This can be achieved by either creating a special **"Notice on Vehicle Weight and Axle Loads,"** or by adding this data to the existing Bill Of Lading (BOL), Equipment Interchange Report (EIR) or Container Load List.

(b) For inbound containers, the box information can be obtained from ship manifests. The chassis and truck data can be copied from the actual equipment involved. In case of a suspected overweight box, a verification can be achieved by actual weighing.

(c) For outbound containers, the information can be obtained either through estimation (unit weight times number of units), or actual weighing.

(d) The proposed documentation is voluntary. It is expected to be provided (and signed) by the party who tenders the freight (or CFS ), the ocean carrier (or stevedore), and the driver who accepts the box.

(e) In case of overweight boxes, lightening of boxes will be performed at the expense of the party who tendered the freight, as it is presently done in case of other special terminal services.

(f) Several marine terminals have already began providing weight data on a regular basis.

Long-term solutions should be based on a carefully prepared national benefit/cost assessment examining the economic trade-offs among:

- **Roads** -- cost of relaxation of current regulations and/or physical improvements, especially bridge; issues of safety vs. congestion (heavy boxes vs. more boxes on the roads).

- **Chassis** -- cost of providing special chassis and cost of matching the overweight to these chassis; and

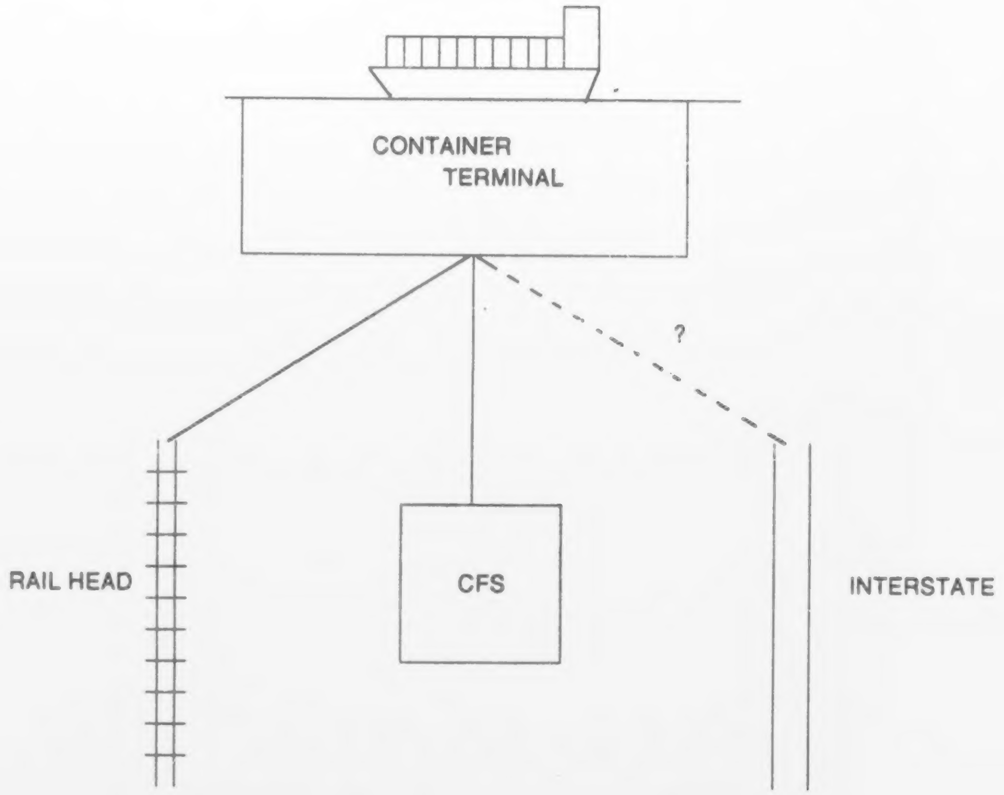
- **Transport Services** -- cost of separating boxes according to their weight; cost of weighing boxes and/or truck combinations; cost of destuffing overweight boxes and the potential damage and theft to cargo; estimate the overall ocean and surface added freight to shippers.

The analysis should be conducted according to a range of possible weight brackets (e.g. 45 - 50 - 55,000 lbs.). The roads should be divided into "access roads" to local CFS and/or railhead (whereby special corridors can be established) and "general roads" (including the Interstate system).

Our expectation is that the "solution", or the optimal combination of the three, will not be a catch-all, uniform weight limit on containers. A set of limits will probably be developed, according to types of roads (access or general). In essence, it will involve **expanding of the existing overweight corridor system**.

If this is the case, there is no need for a special Federal legislation in the future, but perhaps for coordination to assure universality.

# THE OVERWEIGHT GAP


CONTAINER
TERMINAL
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RAIL HEAD
CFS
INTERSTATE

*Before the*

## UNITED STATES HOUSE OF REPRESENTATIVES SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT OF THE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

SEPTEMBER 13, 1990
WASHINGTON, DC

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*Statement of the*

# AMERICAN TRUCKING ASSOCIATIONS, INC.
*On*
# OVERWEIGHT CONTAINERS

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**Thomas J. Donohue**
President and Chief Executive Officer

Without Trucks
America Stops

ATA

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VI. SUMMARY

Chairman Anderson and members of this Subcommittee, my name is Thomas J. Donohue. I am president and chief executive officer of the American Trucking Associations, the national trade association of the trucking industry. ATA's membership includes more than 4,000 carriers and industry suppliers of all sizes and types. ATA is a federation; membership in our 51 state associations and 10 conferences representing different industry segments, combined with ATA's direct membership totals over 30,000. ATA is also the parent of the Intermodal Council, the only organization representing the interests of the intermodal truck operator on a national basis.

I appreciate this opportunity to present the trucking industry's views on the subject of overweight containers. This area of transportation has become increasingly important with the growth of an international economy and the multimodal partnerships which have been forged to service this trend.

My remarks today will address the issue of overweight containers through focusing on:

- A Quantification of the Overweight Issue;
- The Safety and Economic Burdens of Overweight Containers and;
- Remedies for the Overweight Container Problem.

## I. INTRODUCTION

Historically, Congress and the Federal regulatory agencies have viewed trucking as a domestic transportation mode, influenced little by international trade, competition, and transportation trends. However, the rapid growth of domestic and international containerization of freight in recent years has resulted in increasing numbers of maritime and rail shipping containers being transported over America's highways. As a result, the trucking industry finds itself an integral part of international commerce and multimodal transportation.

According to a recent study by the Federal Highway Administration (FHWA), one-third of all inbound and outbound containers are carrying cargoes at weights that could cause the transporting vehicle to violate Federal vehicle weight laws. These overweights have the potential to cause damage to highway pavements and bridges and to impair vehicle performance resulting in safety problems.

Overweight containers -- import, export, and domestic -- have traditionally been viewed as a truck weight enforcement problem, not as an international or modal competitiveness problem. This is primarily because they become illegal only when they are transported over the highway. Tickets for overweight containers are issued to the motor carrier even though the trucker has no control over the weight or loading of the container and may not be aware of the cargo weight. In some cases, the trucker is forced to take an overweight container because of competitive pressures and excess capacity which exists in the intermodal segment of the market.

The FHWA has taken the lead on the overweight container issue. To its credit, it recognizes that the trucker is not responsible for the overweights and that culpability must be directed at the parties responsible for tendering the freight. Unfortunately, FHWA, as do other regulatory agencies, lacks jurisdiction and, as a result, direct authority to solve this problem. As a result, the overweight issue, although increasingly important, falls through the "bureaucratic cracks." For example, Federal agencies cannot:

- Issue regulations which make the shipper and/or his agent responsible for overweight containers;

- Require shippers, both domestic and international, to indicate the actual weights of individual containers on standardized shipping documents;
- Require State uniformity for issuance of overweight container permits;
- Require ports and/or marine terminal operators to confirm declared shipment weights before import containers leave port property; and
- Require owners of intermodal equipment, chassis and piggyback trailers, to provide inspected, well-maintained and appropriate running gear in accordance with new Federal annual vehicle inspection requirements.

These issues will not go away. The problems will become worse and dramatically affect the competitiveness of U.S. motor carriers as their international and multimodal endeavors increase. Before we can compete internationally, we must find a solution to the overweight problem at home.

It is the goal of the trucking industry to find a means to more equitably share the responsibilities of overweights. Therefore, we urge this Subcommittee to recognize the uniqueness of multimodal transportation operations and provide the appropriate regulatory agencies, such as the FHWA, Federal Maritime Commission (FMC), and Interstate Commerce Commission (ICC), statutory authority to establish rules affecting the transportation of overweight containers. In addition, this Subcommittee should enact laws, which place the burden of illegal overweight shipments on the party who controls and tenders the loads.

ATA believes there are three principles that should guide the solution to the overweight issue:

- Motor carriers have the right to know container and axle weights before they leave the ports, rail ramps, or shipper's dock;
- If given incorrect weight information which results in fines, penalties or civil liabilities, motor carriers should be entitled to recoup their losses from the party who tendered the load and;
- Carriers who refuse to carry unsafe loads should be protected from retaliation.

## II. IDENTIFICATION AND QUANTIFICATION OF THE OVERWEIGHT CONTAINER ISSUE

### BACKGROUND

Intermodal transportation has grown tremendously in the last 30 years. Average traffic volumes for containers alone have increased 12 to 15% annually. The cargo containers used to transport freight constitute large metal boxes 20 feet to 53 feet long. The containers are transported on chassis or flatbeds, sometimes referred to as running gear. This equipment is not normally provided by the motor carrier; rather, it is owned by the steamship line, railroad, or a leasing pool.

The problem of overweight containers, which for the purposes of this analysis represent equipment and cargo that would violate Federal highway weight rules, is the result of several factors.

The structural design of the container itself often leads to cargo loadings which are above the permitted highway weight limits. The Federal vehicle weight limit currently in effect permits single axle loads up to 20,000 pounds, tandem axle loads up to 34,000 pounds, and gross vehicle weights up to 80,000 pounds. The tare weight of a container and its chassis is greater than a semitrailer unit of equivalent length. Therefore, based on equipment weight alone, a containerized shipment starts off heavier than a more traditional load configuration.

The manufacturer's rated capacity of a container is also a contributing factor to overweights. For example, a 20-foot box is manufactured to hold up to 65,000 pounds of cargo. Were this amount of freight to be loaded, the cargo weight plus the weight of the equipment (tractor, container, and running gear) would exceed axle weight limits.

To further complicate the process, certain transportation pricing systems encourage shippers to overload containers. Freight rates are often based on the shipping unit, i.e., container vs. the actual cargo weight. This practice provides an incentive to load containers to the maximum capacity, which in essence affords a lower transportation cost per item.

Exacerbating the above factors, is the lack of uniformity in highway weight permitting rules at the local and State levels. Some States issue permits under which an overweight container can move within the boundaries of those States. This practice occurs primarily in the Mid-Atlantic and Southern regions of the U.S. The basis for such permits is usually the "nondivisible" nature of the cargo, stemming from the fact that the containers were moving in international commerce under a Customs bond and seal. Increasing competitiveness between market regions and ports, however, has resulted in a "keep up with the Jones" scenario where the criteria and issuance of overweight permits is in a constant state of flux. Problems also arise when a container shipment moves between two or more States with differing permit requirements, e.g., the originating port State issues an overweight permit, but other States through which the container moves, will not. In one extreme instance, a West Coast port actually advertised for overweight containers with the promotion, "Bring us your overweights."

## QUANTIFICATION OF THE PROBLEM

Most parties involved in container movements agree that overweights do exist. The proof is obviously in the abundance of tickets being issued to motor carriers for highway weight violations. However, controversy has arisen concerning the actual magnitude of the problem.

In 1988, at the request of the motor carrier industry and elected officials, the FHWA analyzed data from the Journal of Commerce Port Import Export Reporting Service (PIERS) master file to determine the number of international maritime container shipments that could cause highway transport vehicles to violate Federal vehicle weight and axle limits due to the container's excessive weights. The sample consisted of all container shipments moving through U.S. ports on the 15th day of each month over a one year period from October 1987 through September 1988. The analysis of potentially overweight container shipments considered movements by 20-foot and 40-foot containers representing approximately 96 percent of the U.S. container population and 91 percent of all U.S. container movements taking place on the days in the survey.

During the twelve day sample period, the file recorded 104,863 twenty and forty foot containers moving through U.S. ports. Of these containers, 35,190 (or 33.5 percent) were carrying cargoes at weights that could cause the vehicle transporting it to violate Federal vehicle weight laws. The survey also identified specific commodities that were more likely to exceed the weight limit. The export commodities most frequently carried in overweight containers were: paper, plastic resins, chemicals, logs/lumber, and animal feed. Import commodities most frequently carried in overweight containers were: beer, paper, ceramic tiles, non-alcoholic beverages, and coffee.

The results of the PIERS analysis clearly indicate that a major problem exists with overweight containers on U.S. highways. Surprisingly, export container shipments are just as likely to be overweight as import traffic.

Critics of the PIERS report point out that the analysis includes direct ship/rail movements which do not involve any highway transportation. The portion of the container shipments moving exclusively by water and rail, however, is less than five percent of the total container traffic. The report more likely underestimates the potential for illegal overweights, based on the fact that the cargo weights in the database are declared vs. actual.

## III. THE SAFETY AND ECONOMIC IMPLICATIONS OF OVERWEIGHT CONTAINERS

Overweight containers place unfair burdens on the trucking industry. Overweights are unsafe, but the trucking industry has no control over shippers' loading practices. Illegal, overweight containers compromise the safety of the motoring public and put the truck driver in an unsafe environment. Excess weight increases stopping distances, decreases the ability to control the truck, and increases the stress on mechanical parts of the truck. The motor carrier industry bears the safety burden.

Overweight containers make U.S. goods less competitive. Because transportation is a substantial non-competitive portion of the cost of goods, overweight foreign containers result in a lower percentage of the product cost going toward transportation. This can result in cheaper foreign goods compared to equivalent domestic products. Additionally, when goods are manufactured in the U.S., trucks haul all commodities used in their various stages of manufacturing, e.g., raw materials, intermediate goods, and finished products. But when goods are manufactured overseas, trucks haul only one movement: from the port. It's not surprising that at the same time imports were increasing, U.S. domestic tonnage has remained stable. U.S. industries bear the economic burden.

The overweight containers are illegal. Although the trucking industry has no control over the weight, the motor carrier is fined because the container is his responsibility while on the highway. Under the current system, the truck driver picks up the container and delivers it directly to the consignee by highway. The trucking company is liable for overweight violations, as well as all safety rules on the highway and may be fined or its equipment prevented from moving, or both. The trucking industry bears the legal burden.

## IV. ATTEMPTS AT SOLUTIONS TO THE OVERWEIGHT CONTAINER PROBLEM

Prior to seeking a legislative solution to the problem, several private sector and regulatory approaches were pursued.

The first attempt involved consideration of the problem by all affected parties under the guidance of the National Motor Carrier Advisory Committee of the FHWA. Participants included: ATA, the National Association of Stevedores, the Steamship Operators Intermodal Committee, American Association of Port Authorities, Independent Owner Operators Association, and the National Industrial Transportation League. Several meetings were held over the last two years and the issue evolved from a disbelief that this was nothing more than just an isolated area to a general agreement that the problem of overweight containers did exist. However, questions of magnitude and effective solutions prevented any tangible inroads in curbing the flow of overweights. No one wanted to take that first step.

Educational efforts were undertaken to provide further insight on the problem. These efforts involved regional container loading and weighing demonstrations, held at the Ports of New York/New Jersey and New Orleans. In each instance, a variety of loaded containers, both 20 foot and 40 foot, were placed on different chassis and weighed to determine if the load would meet Federal highway weight limits. These demonstrations provided the threshold cargo loading limits which were used in the aforementioned FHWA analysis of the PIERS data. It was concluded that cargo in excess of 37,000 pounds transported in 20-foot containers would usually violate, at minimum, highway axle weight rules. The comparable weight threshold for 40-foot containers was found to be 44,000 pounds.

The demonstrations also showed that in order to legally transport weights which exceed the recommendations, specialized running gear must be used. This equipment includes sliding and tri-axle chassis which allow increased loadings per axle. Unfortunately, this specialized equipment is not readily available for usage throughout the country; is considerably more expensive than standard chassis; and is only effective for "marginally" overweight shipments. Additionally, the weight of the cargo must be known in advance to determine if a specialized chassis is required.

Failing to make substantial progress in eliminating overweight container shipments through private sector meetings and educational efforts, the ATA and the Intermodal Council joined with two steamship conferences in August of 1989, filing two separate petitions before the Federal Maritime Commission (FMC), the only U.S. government agency which had the authority to affect a cure for the problem.

One petition, P4-89, was co-sponsored by the Transpacific Westbound Rate Agreement (TWRA) and ATA and sought to eliminate container rate transportation pricing for commodities which were frequently found to be overloaded (as identified in the FHWA PIERS analysis). Preventing this type of pricing, which by its nature encourages shippers to load as much as possible into a container regardless of shipment weight, should eliminate the incentive for overloading.

The other petition, P3-89, was jointly filed by the South European/USA Rate Conference (SEUSA) and ATA. This petition utilized the weight thresholds established in the regional container loading demonstrations and sought to restrict cargo weight to 37,000 pounds per 20-foot containers and 44,000 pounds per 40-foot container, allowing for higher weights contingent upon the use of specialized chassis. While petition P4-89 is an economic approach to eliminating the most obvious violations, the SEUSA/ATA petition would, in effect, halt the tendering of containerized cargo which could not be legally transported on U.S. highways.

In a decision served on June 5, 1990, the FMC acknowledged jurisdiction over the issue of overweight containers, but declined to take any remedial action. The agency questioned the petitions' reliance on the aforementioned PIERS analysis as evidence that a problem existed. The FMC indicated that the issue was better addressed by Congress or the trucking industry itself.

## V. REMEDIES FOR THE OVERWEIGHT PROBLEM

Existing Federal and State laws do not offer a solution to the problem. Overweight laws place the responsibility and liability of overweight violations on the motor carrier. Since the carrier often has no way of knowing the weight of the container it is transporting until it is weighed at a checkpoint, this system does not offer a workable solution to the problem. The shipper who overloads the container receives no penalty for his actions. In fact, the shipper and receiver of the container continue to enjoy the benefits of their actions while the motor carrier and the general public suffer the risk of the overweight and the expense.

ATA believes that to solve this serious problem, Federal legislation is needed that would give, to the Secretary of Transportation, authority to pursue those parties tendering overweight shipments to motor carriers. ATA proposes the following six part solution:

1. Require all persons tendering shipments to motor carriers to verify in writing the weight of the shipment.

A major part of the overweight container problem stems from the simple fact that motor carriers have no reasonable means of ascertaining the weight of a container before they have transported it on the public highways. By requiring the party tendering the container to the motor carrier to verify in writing the weight of the container, the law would place the burden on the party already having the information; the shipper, ocean carrier, railroad, or consolidator, and would assure that the motor carrier is provided the information it needs before transporting an overweight container.

2. Provide that anyone submitting a false or erroneous weight verification to a motor carrier shall bear the full criminal and civil responsibility.

   In order to assure that the verification provided the carrier is accurate, a substantial penalty must be imposed on anyone providing a false or erroneous verification.

3. Create a lien on the goods being transported in the amount of the fines, penalties or other liabilities arising from the incorrect verification.

We must recognize that many times the party tendering the verification will not be located in the jurisdiction in which the overweight violation will be discovered. Therefore, there is a need to provide a simple method by which fines and penalties can be recovered. The creation of a lien should be in favor of any government entity, Federal, state, or local, that imposes any fine or penalty [illegible] any motor carrier that is fined or penalized as a result of the incorrect verification.

4. In the event that a carrier accepts a shipment without a verification, both the carrier and the party tendering the load should be subject to fine or punishment.

The carrier should still be held responsible if it accepts a load with a verified weight over that which can be lawfully transported over the highways and should also be held equally responsible with the shipper in the event it accepts an unverified load.

5. Provide protection for the motor carrier from economic retaliation by shippers and others should a carrier refuse to transport an overweight shipment or otherwise violate highway safety laws.

Because of the highly competitive condition of the motor carrier industry due to the excess capacity and thousands of new carriers licensed by the ICC, it is easy for a shipper to "shop" the market for a carrier that is desperate enough to accept an overweight load or otherwise violate the safety laws and regulations under market pressure.

6. Correct an oversight in the employee protection provisions of 49 U.S.C. 2305 to provide protection for employees of shippers who are disciplined or punished by their employer for refusing to violate the safety laws.

The current law provides protection from retaliatory action for motor carrier employees who make safety related complaints. This protection should be extended to include the employees of shippers and others who complain to their employers about unsafe highway practices. If a traffic manager or other shipper employee is fired or disciplined for complaining or agreeing to testify about their employer's shipping practices, the protective provisions of section 2305 currently do not apply.

Enactment of these provisions may not prevent all overweight shipments, but they will put a portion of the responsibility on the party who knows or has the opportunity to obtain the information as to the weight of the shipment. Further, it will protect carriers and individuals from retaliation for refusing to transport an overweight load.

## SUMMARY

The world is moving quickly to a global economy. An integral part of this economy is the shipment of intermodal containers across this country's highways. To compete in this international market, this country must find solutions to overweight containers. Present day rules and institutions do not meet the new facts of life.

Legal solutions are available for the overweight container problem. The motor carrier industry has borne the economic, legal, and safety burdens of this issue far too long. Congress must legislate intermodal responsibility laws. By proceeding in this manner, the public would be protected from illegal and unsafe containers, those tendering the illegal weight would be responsible for the legal ramifications, and the domestic economy would be protected from an unfair advantage in transportation costs.

ATA urges this Subcommittee to pass legislation to require weight verification of containers to motor carriers, to provide for criminal and civil responsibility for anyone submitting false or erroneous weight verification, to create a lien on the goods being transported in the amount of any fines, penalties, or other liabilities, and to impose dual responsibility for any carrier who knowingly accepts an overweight container.

# Statement of Douglas L. Johnson
Freight Transportation Consultant

to

Investigations and Oversight Subcommittee
House Public Works and Transportation Committee

June 28, 1990

For the record, my name is Douglas L. Johnson and I am an independent freight transportation consultant. Over the past four years I have conducted several studies involving research on intermodal freight transportation, including the problem of overweight containers. Before going on my own, I was for four years Director of Highway Studies for the Association of American Railroads (AAR). While there I was involved with studies concerning, among other things, the projected growth of containerized imports and exports, problems in moving marine containers by rail, causes of pavement damage, and research on state highway size and weight laws. Prior to that I was a Policy Advisor for the United States Railway Association for two years, and prior to that was Manager of Public Policy Analysis for Conrail for four years. In both cases, my responsibilities included analyzing highway and trucking issues.

Among my recent work is a detailed policy study of the problem of overweight marine containers on the highway. This study, which was completed in July 1988, included extensive background research on containers, container trade, and the container transportation chain as well as an analysis of the causes and possible solutions of the problem. It was based on a review of the relevant literature and on interviews with 37 key officials in industry and government. The principal finding was that, while "the evidence there is suggests that the overweight container problem may be enormous and widespread," further research, using the PIERS data base, is needed to pin down the actual scope and extent of the problem.

## FHWA Study

The FHWA carried out just such research, using the PIERS data, in 1988 -1989 and found that fully one-third of a representative sample of all marine container imports and exports during a one-year period would have exceeded Federal weight limits if transported by typical highway equipment. For the sample year in question (October 1987 - September 1988), one-third translates into 1,070,000 potentially overweight container shipments that could appear on the highway.

This study has been criticized on a number of grounds:

1) that the PIERS data is flawed or incomplete;

2) that the sampling procedure was incorrect;

3) that many of these containers don't actually travel on the highway;

4) that many of those that do can be hauled legally with different equipment;

5) that even if some shipments violate Federal limits, they are legal under various state exemptions or special permits; and,

6) that overweight containers are only a small part of a broader overweight truck problem and it is unfair to single them out.

None of these arguments seem to me to have much merit, but let me discuss them each in turn.

1) When I first inquired about the possibility of using their data, the PIERS data base managers convinced me that they recorded virtually all container shipments entering or leaving the country---they survey 47 U.S. ports ---and had quality control checks that kept errors to a minimum. Consequently, I feel that the data base is probably as accurate as possible. It is certainly widely used, and, as far as I know, has always proved reliable.

2) The sampling procedure followed--taking all shipments on the 15th day of every month for a year---seems to me to be perfectly sound and should produce a true representative sample. The only question I would have in this regard is to ask how the problem of multiple container shipments was handled. In such cases, often only the gross weight of the entire shipment is given and not the weight of each individual container This would not seriously affect the outcome, however, because when I looked into this question I found that only about 25 percent of all shipments were of this type and that individual container weights could be deduced in many of these cases.

3) While many containers nowdays move to or from ports by rail, especially by double-stack unit trains, very few on-dock rail facilities exist.

Thus, almost all container shipments require at least some drayage near the port. More importantly, they also require truck pick-up or delivery at the beginning or end of the movement. Although drayage between railyards and marine terminals is usually short, pick-up and delivery distances can be much longer.

In any event, it is probably still true that most marine containers never see a railcar at all. The only publicly available study on inland transportation of marine containers that I am aware of was done in 1986 for the ICC hearings on the proposed CSX-Sea Land merger. This study concluded that "motor carriers transport the vast majority of containers for distances up to 500 miles from port facilities," and that "even for movements of greater distance . . . motor carriers compete vigorously with railroads for many inland container shipments (particularly those moving to and from East Coast ports)." (Verified Statement of Forrest S. Baker, Jr., President, Transportation Research and Marketing (TRAM), ICC Docket No. 30900.) The conclusion seems inescapable that the vast majority of these potentially overweight container shipments do, in fact, appear on the highway.

4) The contention that potentially overweight containers can be hauled legally if the right tractor and chassis are used is, of course, correct but I believe rarely occurs. It is also true that by using lightweight equipment, especially lighter tractors, and by very carefully packing the container and distributing the load properly over the axles, it is possible to legally carry up to 47,000 pounds of cargo in a 40 foot box on a 40 foot chassis, rather than the 44,000 pounds that the FHWA study used to define overweight. Again, however, I don't believe that this actually happens very often.

In the first place, the equipment necessary to make the overweights legal (mainly 27 foot slider and tri-axle chassis for heavy 20 foot boxes, and adjustable four-axle chassis for heavy 40 foot boxes) is not readily available (although more and more 27 foot sliders are appearing) and is much more expensive. Moreover, most truck tractors used for long hauls, especially by owner-operators, are heavier rather than lighter---they typically range from 16,500 to 18,500 pounds or more, well over the 16,000 or so pound limit needed to accomodate a 47,000 pound payload. Secondly, I doubt that very many shippers take the time and trouble to pack a container and distribute the weight as carefully as they should. Thirdly, many of the overweight containers in the FHWA study were significantly overweight. While 41 percent were found to be less than one ton overweight, 50 percent were from one to five tons overweight and nine percent were more than five tons overweight. These very heavy loads can be made legal but only with considerably effort and expense.

5) The contention that containers which are overweight by Federal standards can nevertheless still be trucked legally because many states have higher "grandfathered" weight limits and/or grant special operating permits is true, but that is a major part of the problem. The difficulty is that weights that are legal in one state are likely to be illegal in neighboring states, and most containers probably travel interstate. State size and weight laws and permitting regulations and practices are a total hodge-podge. This places an enormous administrative burden on shippers and carriers alike. It also allows ports to try to exploit whatever advantages their state laws give them in order to gain a competitive edge over rival ports. This may result, however, in economically irrational shipping patterns that, over time, actually increase total shipping costs. In any event, the permit fees that states charge don't begin to recover the cost of the pavement damage that occurs.

6) Finally, the argument that overweight containers are only a part of a general overweight truck problem is also true, but I don't believe that it follows that nothing should be done about them until the broader problem is attacked. If even a small part of a major problem can be solved, it seems to me to be worth trying. To summarize then, I feel that the FHWA study is quite sound, that it deliniates the magnitude of the problem, and that no further research is needed---what is needed is action to solve the problem.

## Causes of Problem

Ignorance of Laws. Before discussing some of the solutions that have been proposed, let me briefly review what I see as the major causes of the problem. One obvious reason that shippers overload containers is that they are unaware of the applicable laws. It seems unlikely that very many foreign shippers know about the provisions of U. S. Federal laws, let alone state laws, and it would not be surprising if a significant number of American shippers were equally ignorant. Even where shippers are aware of the Federal limits, and know the weights of their containers, they may have only a hazy notion of the specifications of tractors and chassis.

The difficulty that shippers have is at least partly due to the complexity of the laws. The Federal highway weight limit is really three limits---the gross vehicle weight limit, the axle weight limits, and the bridge formula weight limits. Moreover, gross weight limits can be exceeded under state laws. Twenty states have statutory provisions permitting higher gross weights under various "grandfather" clauses, and almost all states allow higher limits for "non-divisible" loads with a special permit. As indicated above, these numerous exceptions may not be a cause of the overweight problem but are obstacles to its solution.

Lax Enforcement. A related factor and a contributing cause is the lax enforcement of their own highway weight laws and permit regulations by many states. In many states, shippers and carriers, fully aware of the laws, are also aware that the states' enforcement practices are so weak and ineffective that overweight loads can easily escape detection. Lax enforcement on the part of the states is not confined to marine containers. As intimated above, it is part of the general failure of states to enforce weight laws on all trucks.

Different Weight Limits. Another obvious reason for shippers to load containers over highway weight limits is that the weight limits of the marine containers themselves are much higher. Shippers of dense commodities naturally want to take full advantage of the capacities of their containers---they incur an economic penalty for not doing so. The maximum gross weight limit of a standard 20 foot dry van ISO container is 20 metric tons or over 44,000 pounds. (For some that are so rated and plated, the maximum is 24 metric tons or almost 53,000 pounds.) The maximum for a standard 40 foot dry van ISO box is 30 metric tons or over 67,000 pounds. Container ships, container cranes, and many (but not all) container unit trains can easily accomodate these weights even if the highways can't. Another disparity in weight limits is that between U.S. and foreign highway limits. Most of our major trading partners in Europe allow from 38 to 44 metric tons on their highways (83,775 to 97,000 pounds), and there is some indication that the whole of the EEC is moving toward the higher figure. On the other hand, most East Asian nations have somewhat lower gross weight limits than we do.

Tariff Structure. Another major reason that many shippers overload boxes is that most ocean (and rail) container freight rates are now based on flat charges per box without regard to weight. This puts a premium on stuffing the container as full as possible because the per unit costs of a shipment will decrease as the amount of cargo increases. The role of these "box rates" was strongly enhanced by the service contracts permitted by the Shipping Act of 1984. Under these contracts, shippers commit to a minimum number of containers over a certain time period and ocean carriers guarantee a fixed rate per box as long as the quota is met. The perception in the industry seems to be that these provisions have given shippers the upper hand and that box rates are so strongly imbedded in the market place that it will be very difficult to revert to any other rate structure.

Intense Competition. Finally, an underlying cause of overloading I believe is the intense competition that seems to pervade every segment of the intermodal marine container transportation industry. Ocean, rail, and highway carriers, and port and terminal operators, feel in competition with each other and rather at the mercy of shippers. Thus, carriers and terminals are more willing to accept containers that they know or suspect are overweight out of fear of loosing business to competitors. Shippers themselves are often in sharp competition, but would try to minimize their costs by loading as much as possible anyway. Carriers and terminals, on the other hand, have no particular incentive to accept overweight loads except competition. In fact, they have every reason to want to handle only legal loads. Overweight boxes increase maintenance costs, can seriously damage equipment, create safety problems, raise issues of liability in case of an accident, and, for motor carriers at least, bring the real possibility of heavy fines. Moreover, shipping only legal loads would require using more containers and produce more work and more revenue for everyone. Yet, for all of this, few in the industry are willing to step out in front and be the first to refuse to handle overweight boxes.

## Possible Solutions

Just as I believe that there is no single cause of the problem, so too do I believe that no single solution is sufficient. A comprehensive and effective solution acceptable to most parties will probably require some combination of approaches, and will have to address all of the major causes. The following seem to me to be the most promising ideas.

Shipper Education. Whatever other approaches might be attempted, it would seem necessary to accompany them with a serious education campaign designed to acquaint all concerned, but especially U.S. importers and exporters, with just what the highway weight limits are and just how much a shipper can realistically load if he is to comply with those laws. By itself, this approach offers only a very long range solution at best, but it does have the virtue of being just about the least intrusive and least expensive approach possible, and it can be combined with any other approach.

Better Enforcement Through Weighing. Several methods of enforcing current weight limits by comprehensive or selective weighing have been proposed. These include utilizing private scales; adding scales near ports for voluntary weighing; installing weighing-in-motion (WIM) equipment at port gates and elsewhere; expanding roving weight enforcement teams with portable scales; adding strain guages to cranes and other lifting equipment; and requiring a weight limit compliance certificate. Unfortunately, most of these methods appear to be rather intrusive and/or quite costly. Costly not only because of the capital expense involved but because of the delays and disruptions that would result, especially at marine terminals. Probably the least instrusive and, over the long-run, least costly of these methods is installing WIM equipment; however, we are still some years away from that happening.

If the states could agree to really crack down on overweight loads, the problem could be fairly quickly resolved. If even just the states along a coastal range were to coordinate their efforts and begin to beef up their patrols, impose heavy fines, and lift licenses, truckers would soon learn to be very careful about the loads they accepted. This, in turn, would force ocean and rail carriers, and shippers to be equally careful. The near impossibility of actually getting most states to cooperate in such a program makes this approach rather theoretical and points up the fact that a federal solution is probably necessary. Nevertheless, it does suggest that improved state enforcment should not be overlooked. There are some scattered examples of innovative approaches among the states, such as Oregon and Texas where shippers have been made directly liable for overweight fines, and California, where those who consistently overload containers can be prosecuted for "unfair business practices."

Modified Weight Laws. What is proposed is not to change existing Federal weight limits but to bring greater uniformity to state weight laws, regulations, and enforcement practices, most especially the definition of what cargo is "divisible" and what "non-divisible," and the requirements for granting special permits and exemptions. Given that America has an increasingly unified national economy and, indeed, that the national economy is increasingly part of a single world economy, such regional and local disparities are nothing but anachronistic fetters on interstate and international commerce. The difficulty of getting the states to cooperate in this area again implies the need for a strong Federal role.

Modified Tariffs. A very promising approach is to change ocean (and rail) tariff structures to remove or minimize incentives for overloading containers. This could range all the way from simply changing the voluntary Uniform Intermodal Interchange Agreement (UIIA) to prohibit tendering of overweight boxes to a complete statutory ban on box rates. The two petitions to FMC tried to take positions somewhere in the middle. One sought to prescribe maximum container weights and make shippers responsible for complying, while the other would have abolished box rates for commodities "shown to contribute to overweight container abuses." I understand FMC's reasons for not wanting to become involved in this issue, but I'm still disappointed that they dismissed the petitions out-of-hand. While neither was a complete solution, they would have gone a long way in that direction. Since both ocean and highway carriers supported this approach and agreed on the wording of the petitions, perhaps thay can come together again and try to implement this solution voluntarily. Given the role of shippers and the level of competition within each industry, this will not be easy but it should certainly be strongly encouraged.

Specialized Equipment. Perhaps the best approach over the long-run, because it would solve the problem permanently, is for the intermodal industry to invest in all of the heavy specialized equipment necessary to make overweight container rigs legal on the highway. Clearly this can only be a long-range solution because such equipment is costly and the industry already had a large investment in existing equipment which still has many years of useful life. Perhaps incentives could be made available to induce carriers to purchase such equipment before they otherwise would---for instance, a one month exemption from Federal gross weight limits for every $100,000 invested within a certain period.

To reiterate, I don't believe that any of these approaches by themselves offer a complete solution to the problem. Some combination will undoubtedly be necessary. Any proposed solution, I feel, must meet at least three major requirements---it must deal with both inbound and outbound containers; it must apply equally to all segments of the industry; and it must cover uniformly all areas of the country. Again, this implies that the Federal government must take the lead in resolving the issue, and that the problem may, in fact, require a Federal solution.

Thank you for your interest. I would be happy to try to answer any questions that the Committee may have.

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TO: U. S. HOUSE OF REPRESENTATIVES
TRANSPORTATION AND PUBLIC WORKS COMMITTEE
INVESTIGATIONS AND OVERSIGHT SUB-COMMITTEE

RE: STATEMENT OF THE
STEAMSHIP OPERATORS INTERMODAL COMMITTEE
U. S. HOUSE OF REPRESENTATIVES
TRANSPORTATION AND PUBLIC WORKS COMMITTEE
BEFORE THE INVESTIGATIONS AND OVERSIGHT SUB-COMMITTEE
JUNE 28, 1990

SUBMITTED BY:

STEAMSHIP OPERATORS INTERMODAL COMMITTEE

DAVID B. LETTENEY
EXECUTIVE SECRETARY
ATLANTIC REGIONAL COMMITTEE

JUNE 21, 1990

# STATEMENT OF THE
# STEAMSHIP OPERATORS INTERMODAL COMMITTEE
# U. S. HOUSE OF REPESENTATIVES
# TRANSPORTATION AND PUBLIC WORKS COMMITTEE
# BEFORE THE INVESTIGATIONS AND OVERSIGHT SUB-COMMITTEE
# JUNE 28, 1990

The Steamship Operators Intermodal Committee (SOIC) is an Association of 20 ocean common carriers operating in the foreign trade of the United States under the authority of Federal Maritime Commission Agreement No. 203-009735. A membership list is attached.

Since its founding in 1969, it has been the objective of SOIC to improve the utilization of carrier-owned and operated containers and chassis equipment through discussion, negotiation, education and the publication of manuals of recommended inspection and maintenance practices. A major goal is the safe operation, inspection and maintenance of chassis equipment used to transport marine containers in the domestic highway system of the United States.

One important element of safe transportation is the cargo load inside the containers. SOIC has been deeply involved in the matter of "overweight" containers since 1983. Our appearance here today is evidence of our continuing interest in achieving a fair and equitable balance between the differing needs of the various parties involved: Federal and state transportation authorities, ocean common carriers, truckers and shippers both in the United States and overseas.

## I. BACKGROUND

Throughout the ensuing statement, it should be understood that marine containers have gross weight capacities which exceed allowable capacities for highway transport. A forty foot container has a gross weight capacity of 67,200 lbs. while international standards for twenty foot containers range from 44,800 lbs. to 52,900 lbs. These capacities include container and cargo. In highway transport, cargo capacity is determined by several factors: tractor, chassis and container tare weights, the distance between axles, axle loadings, tire capacity and load configuration. When traveling on the Interstate Highway System, the cargo capacity is defined by the Federal Bridge Formula as enacted in the Surface Transportation Assistance Act of 1982. When moving over state highway systems, numerous exceptions apply, most of which permit somewhat heavier loads, either in gross, on axle sets or both. It is these state exceptions which are partly the cause of the existing confusion over cargo load capacities. We have consistently used the Federal Bridge Formula as the basis for our statements, presentations and efforts to educate shippers and carriers to the problems of transporting heavy containers within the United States.

There are a number of economic factors which have contributed to the overweight container problem. First and foremost is the tremendous growth of intermodal movements in recent years, growth which has in large part been fostered by the deregulation of the trucking and railroad industries as well as the Shipping Act of 1984. These welcome legislative actions have encouraged innovation in pricing and operation by all modes. A second factor is the changing character of U. S. foreign trade. Over the past twenty years, we have shifted from an exporter of low-density finished goods such as TV sets, auto parts and refrigerators to a producer of raw and semi-finished materials such as lumber, chemicals, waste paper and scrap metals, most of which are of high density and low value, characteristics which encourage shippers to maximize their utilization of a container's load capacity. The use of "FAK" or "box" rates, while greatly simplifying pricing and rating activities for both carriers and shippers, has encouraged the practice of loading equipment to its maximum. Many of our major trading partners permit heavier vehicle load capacities than the United States on their highways, which further contributes to the problem. Finally, port competition, notably in the southeastern states, has encouraged maximum weight loadings through the use of special permits, a questionable practice which sacrifices highway safety and road maintenance budgets in the parochial interests of local port economies.

SOIC, in cooperation with port interests in the New York area, has participated in two projects designed to ascertain the real world load capacities of typical 20-ft. and 40-ft. containers. In the first test, held in March, 1988, twenty-five different combinations of heavy 20-ft. containers, chassis and tractors, and eight 40-ft. combinations were weighed using axle scales utilized by police weighing teams. The second test, conducted in June, 1989, weighed twelve twenties and four forties. The latter test was primarily intended to demonstrate new chassis designs which have the capability to legally handle very heavy 20-ft. loads. From these two demonstrations, participants reached the following conclusions:

(1) The most common type of chassis currently in use for transporting 20-ft. containers, which is 23-ft. in length, can safely handle 37,000 lbs. of cargo load without exceeding Bridge Formula and axle load limitations.

(2) Another common type of chassis, 27-ft. in length, can adequately handle 38,000 lbs. of cargo.

(3) New chassis designs, which can be extended to forty feet in length, some of which have three axles, can safely handle cargo loads of up to 48,500 lbs. This cargo load satisfies the maximum gross weight capacities of ISO-recognized twenty foot boxes.

(4) Forty foot containers can safely load up to 44,000 lbs. before highway capacity is reached.

(5) Every forty foot container weighed resulted in an overload on the tractor axles. We attribute this to shippers heavily loading the front of the container in order to insure adequate room for the shipment.

It should be noted that these comments apply to typical dry container types. Some operators utilize containers of lower tare weight which allow slightly heavier loads. Refrigerated containers, because of their relatively high tare weight, can carry less cargo.

These conclusions, most of which were widely reported in the media, formed the basis for further studies and conclusions. The U. S. Department of Transportation used the load capacities suggested above in the now-famous PIERS Analysis. This study, utilizing commercially available data from inward manifests and Shippers Export Declarations, concluded, to the surprise of the trucking industry (but not the ocean carrier industry) that export containers of all types were more likely to exceed highway weight limits than were import containers. The study also identified ten commodity groups in each direction which are susceptible to overloads due to the diversity of the product and packaging characteristics.

The FHWA study has been criticized by many shippers as flawed in the techniques used and in its logic. Much of the criticism has been levelled at its use of the term "potentially overweight." The purpose of the study was to determine whether there was, in fact, a generalized problem with overweight containers, its direction and its magnitude. In that sense, the study did exactly what it was designed to do and, it should be noted, at very low cost. The use of the term "potentially overweight" reflects the fact that PIERS statistics on import/export container movements include data on containers which may be pier stuffed or unstuffed, containers which never leave the confines of a port terminal area, or which may move solely by barge. Contrary to some assertions, however, rail movements do violate highway laws because virtually all such shipments move over public highways at some point.

## II. ACTIONS OF THE OCEAN CARRIER INDUSTRY IN RESPONSE TO THE OVERWEIGHT CONTAINER ISSUE

The ocean carrier industry, individually and through conference collective actions, have taken a number of steps to attack the problem of overweight import containers. It should be pointed out, however, that they are unable to control heavy exports and that, once received at the terminal gate, the damage has been done. Responsibility for violations resides solely with the shipper and trucker.

Actions taken by the ocean carrier industry include the following:

(1) Programs to alert both sales and operating personnel to the necessity of adhering to the law.

(2) Education programs directed at shippers overseas as well as importers in the United States.

(3) Where scales exist at overseas terminals, the institution of weighing programs for containers received for shipment.

(4) Inspection of inward manifests to detect overweight containers.

(5) When ocean carriers are responsible for through movement to an inland destination, most ocean carriers will refuse to move overloaded containers. They will contact the overseas shipper and/or U. S. importer and seek further disposition instructions.

(6) Several conferences and carriers have placed rules in their tariffs which explicitly limit allowable loadings and make the shipper responsible for containers which exceed U. S. highway limits.

(7) Many carriers have acquired newly designed specialized chassis which allow containers in excess of the cargo weights noted above to be transported over highways. Their use is increasing as more equipment is introduced into the system.

(8) Virtually all terminal operators will, upon the request of a trucker or drayman, provide weight certificates to enable him to determine the legality of the load.

(9) Contrary to the assertions of many truckers, most lines will pay their overweight fines, provided only that they are legitimate and not due to an error of the trucker.

## III. THE FMC PETITIONS

Recently, the Federal Maritime Commission denied petitions of two ocean carrier conferences and the American Trucking Associations. The petitions sought regulatory intervention into the problem of overweight containers. The Commission agreed that they had jurisdiction over the issue but declined to intervene on the grounds that it would be an unwarranted intrusion into Federal/state affairs.

SOIC supported the concept of regulatory oversight, primarily because regulation by an administrative body is more flexible and quicker to respond to rapidly changing economic conditions than legislative action. However, we also recognized that the problem is extremely complex, that equitable regulations would be difficult to write and even harder to enforce and, finally, that there was likely to be deliberate evasion by shippers and carriers, even as there is with present highway laws.

We continue to believe that administrative remedies are preferable to legislative action but we recognize that, in reality, there is a need for both courses.

## III. RECOMMENDATIONS OF THE STEAMSHIP OPERATORS INTERMODAL COMMITTEE

Members of the Steamship Operators Intermodal Committee are committed to highway safety, preservation of our national highway system and adherence to the law. Within this frame of reference, it must be kept in mind that we operate in a highly competitive, dynamic world society. The United States must recognize this at both the federal and state level and, wherever practicable, maintain the flexibility necessary to meet the needs of its trading industries.

Presented below are some recommendations on how this position can be maintained and strengthened:

(1) There is an adequate body of laws at both the state and federal level to deal with the problems of overweight containers. However, there are some weaknesses which inhibit their application:

(a) Insufficient enforcement resources in the form of weighing teams and portable scales.

(b) Fine levels in many states which permit violators to shrug off citations as a cost of doing business.

(c) Misplaced responsibility for violations.

These weaknesses should be corrected through legislation incorporated into the impending Highway Trust Fund Renewal Act. Specifically, cargo owners should share in the cost of fines levied against truckers and, where persistent violations are found, further penalties should be provided. Uniformity of fines at the state level should be encouraged, if not made mandatory. States should be encouraged to continue, if not increase, their weighing activities.

(2) Many states have, in the interests of enhancing a port's competitive position, designated import and/or export containers as "indivisible loads" in order to qualify them for the issuance of overweight permits. It is suggested that these systems, if permitted to continue, require oversight and regulation to ensure that the cost of permits provide sufficient compensation for road damage resulting from heavier loads and that chassis tires and brake systems are adequate.

(3) Earlier, it was noted that forty foot containers often exceed tractor axle limits even though they are within Bridge Formula limits. This is a problem which results from shipper loading practices and it is unlikely that it can be corrected through any sort of education program, considering the universe of shippers involved. Therefore, SOIC urges that Congress, during its consideration of the Highway Trust Fund legislation, insert axle tolerance provisions. This can be accomplished within over-all gross weight and Bridge Formula limits by permitting up to five per cent of permissible axle loads to be transferred from one axle set to another. For example, at present loading of 34,000 lbs. per tandem axle set, 1,700 pounds could be subtracted from the trailer axle and added to the tractor axles. Many states have similar provisions. Consistency in Federal law would be of material assistance to the transportation industry.

(4) There have been suggestions that legislation be enacted which would require that all import containers be weighed at ocean terminals prior to delivery. This is unnecessary and inequitable. The PIERS Analysis clearly demonstrated that overweight export containers are a larger problem than imports. A substantial majority of import containers are well below highway weight limits. In most cases, the scale weight would only confirm the weights shown on the manifest since these are usually correct. Any marine terminal will weigh a container upon a trucker's request. Finally, such a requirement would require marine terminals to install axle scales at an expense which is not justified by the benefits.

(5) We do not recommend legislation to eliminate or limit "FAK" or "Box" rates. This is a simple, efficient and effective pricing practice which has won widespread acceptance by both shippers and ocean carriers. Their elimination would stifle investment in specialized equipment by innovative truckers and ocean carriers.

(6) Innovative Legislative Actions

In closing, we wish to suggest two innovative proposals for consideration:

a) Authorization of special, short-distance corridors for heavily loaded containers of recyclable materials similar to those established by the Port of Oakland, California. These corridors would be restricted to the movement of containerized recyclable materials such as waste paper and scrap metals. The recycling industry relies on exports to relieve the waste disposal problems of large metropolitan areas. These commodities are very low in value and profitability is marginal. Transportation costs, both land and water, represent a large portion of the selling price and restrictions on capacity utilization may stifle the industry. The regulations governing the Oakland corridors offer a good model for strict control.

b) An alternative, or perhaps supplement, to enforcement of highway weight laws is the establishment of "user fees" to be imposed on all export and import containers which exceed a specified cargo weight, with the proceeds to be deposited in the Highway Trust Fund. Identification of heavy containers would be effected through Customs processing of import documents and the Department of Commerce's review of Shipper's Export Declarations. Since both systems are becoming increasingly reliant on electronic data processing and interchange technologies, the costs of identification, billing and collection would be minimal.

We thank you for the opportunity to present our views today.

## STEAMSHIP OPERATORS INTERMODAL COMMITTEE
## CURRENT LIST OF MEMBERS TO AGREEMENT NO. 203-009735

| | | NATIONALITY | MEMBER OF FOLLOWING REGIONAL COMMITTEE | | |
|---|---|---|---|---|---|
| 1) | American President Lines, Ltd. | USA | PRC | | |
| 2) | Associated Container Transportation (USA) | Consortium British/Australian | | ARC | |
| 3) | Atlantic Container Line, Inc. | Consortium: Swedish/ British/French/Dutch | | ARC | |
| 4) | Chilean Line | Chilean | | ARC | |
| 5) | Columbus Lines, Inc. | German | | ARC | |
| 6) | Crowley Maritime Corporation | USA | | ARC | |
| 7) | Evergreen International Corp. | Taiwan | | ARC | |
| 8) | Farrell Lines Incorporated | USA | | ARC | |
| 9) | Grancolombiana (New York), Inc. | Colombian | | ARC | GRC |
| 10) | Kawasaki Kisen Kaisha, Ltd. | Japanese | PRC | ARC | |
| 11) | Lykes Bros. Steamship Co., Inc. | USA | | | GRC |
| 12) | Maersk Line | Danish | PRC | ARC | GRC |
| 13) | Mitsui O.S.K. Lines, Ltd. | Japanese | PRC | ARC | GRC |
| 14) | Netumar Lines | Brazilian | | ARC | |
| 15) | Nippon Yusen Kaisha (N.Y.K. Line) | Japanese | PRC | ARC | |
| 16) | P & O Containers Limited | British | | ARC | |
| 17) | Sea-Land Service, Inc. | USA | | ARC | GRC |
| 18) | Wilhelmsen Lines (USA), Inc. | Consortium: Norwegian/ Swedish/British | | ARC | |
| 19) | Yangming Line (Solar Int'l. Shipping Agency, Inc., Agents) | Taiwan | | ARC | |
| 20) | Zim Israel Navigation Co., Ltd. | Israel | | ARC | |

EXPLANATION OF ABBREVIATIONS:

ARC - Atlantic Regional Committee
PRC - Pacific Regional Committee
GRC - Gulf Regional Committee

6/8/90

TO: U. S. HOUSE OF REPRESENTATIVES
TRANSPORTATION AND PUBLIC WORKS COMMITTEE
INVESTIGATIONS AND OVERSIGHT SUB-COMMITTEE

RE: SUPPLEMENTAL STATEMENT OF THE
STEAMSHIP OPERATORS INTERMODAL COMMITTEE
U. S. HOUSE OF REPRESENTATIVES
TRANSPORTATION AND PUBLIC WORKS COMMITTEE
BEFORE THE INVESTIGATIONS AND OVERSIGHT SUB-COMMITTEE
SEPTEMBER 13, 1990

SUBMITTED BY:

STEAMSHIP OPERATORS INTERMODAL COMMITTEE

DAVID B. LETTENEY
EXECUTIVE SECRETARY
ATLANTIC REGIONAL COMMITTEE

AUGUST 28, 1990

SUPPLEMENTAL STATEMENT OF THE
STEAMSHIP OPERATORS INTERMODAL COMMITTEE
U. S. HOUSE OF REPESENTATIVES
TRANSPORTATION AND PUBLIC WORKS COMMITTEE
BEFORE THE INVESTIGATIONS AND OVERSIGHT SUB-COMMITTEE
SEPTEMBER 13, 1990

Having had an opportunity to hear oral testimony and review statements submitted during the June 27 and 28, 1990 Hearings on Road Damage and Safety Effects of Overweight Trucks Carrying Intermodal Containers before the Subcommittee on Investigations and Oversight, Committee on Public Works and Transportation, U. S. House of Representatives, the Steamship Operators Intermodal Committee offers this supplement to our statement of June 28. The purpose is to comment on some of the issues and questions raised and to offer an analysis of the effects of the Transportation Research Board's Truck Weight Study on marine container traffic.

## I. Comments on testimony of previous witnesses

As a general comment, we are disappointed that the U. S. Department of Transportation is not more deeply concerned with the problem. While they recognized that competition among states and ports, together with broad interpretations of states' grandfather rights is making the problem more critical, they appear to dismiss its severity because marine container chassis represent only 8 per cent of registered commercial vehicles in the United States. However, these relatively small number of vehicles are, for the most part, concentrated in densely populated metropolitan areas where traffic volumes are heavy, road repair costs high and weight enforcement minimal. The testimony of the State of California, as well as city and port authority officials, amply demonstrates their concerns from the viewpoint of those responsible for highway maintenance and safety. Steamship lines, ocean freight conferences and the trucking industry are united in their expressions that economic disincentives to overloading are essential, that the burden of fines and penalties must be, at the least, shared by the parties responsible for overloading and that there must be uniformity between the states and the Federal government, grandfather rights not withstanding.

## II. Questions Raised During the June Hearings

During the June hearings, several questions were directed to SOIC's witness, which are addressed below:

(1) (Q.) Does your organization have input into the International Maritime Organization consideration of a proposal that would require the actual weight of the container to appear on the shipping documents? What is the current practice? If the IMO adopts this proposal, how would it be enforced?

(A.) The author of this statement is a member of the U. S. Coast Guard's Panel on Multimodal Transport and Containers under the Safety of Life at Sea (SOLAS) Working Group on Containers and Cargoes and has, in fact, corresponded on the desirability of IMO action. Several SOIC members also have input to IMO deliberations through membership on their national delegations. If IMO should adopt this practice, enforcement would, in all probability, be delegated to member countries' designated authorities such as the Coast Guard in the U. S. and the Health and Safety Executive in Great Britain. While IMO action would represent another tool in the enforcement kit, it would necessarily be a low-priority item for most governments and nowhere near as effective as state efforts under Federal oversight.

It should also be noted that, in the vast majority of cases, cargo weights are accurate as declared and manifested. This is particularly true in trade with developed countries. There are however, several reasons why weights may be mis-stated:

- In some commodity trades, only the product weight is stated, e.g., coffee. The bags themselves may add a few hundred pounds.
- Similarly, when pallets or securing materials are utilized, their weight is often not included.
- On multiple container bills of lading, there may be variations in individual container weights. For example, a large shipment of beer may have kegs in one container, bottles in another and cans in a third. However, most ocean carriers are able to provide accurate individual container weights.
- When containers are pier-loaded (a common routine in under-developed countries), it is sometimes impossible to determine weights for individual containers.
- And, of course, there is always the rare dishonest shipper seeking to gain some advantage by excessive loading.

Even when weights are accurately known by the ocean carrier and are made available to truckers, there are frequent instances where this information is ignored. Sometimes it is not passed on from importer to broker to truck dispatcher to driver. At other times, the trucker will hope that he does not encounter a mobile weighing team. Competitive pressures often force truckers to take such risks.

(2) (Q.) Other witnesses have advocated the use of the International Maritime Organization standard to certify container weights. In your opinion, will this solve the problem?

(A.) As noted, IMO action would help the problem but would not solve it.

(3) (Q.) What revisions would you suggest for the FHWA PIERS study if that basic approach was to be utilized again?

(A.) PORT IMPORT EXPORT REPORTS (PIERS) is capable of providing much greater detail than utilized by the FHWA in their initial study, including the name of the shipper and carrier (usually the beneficial owner of the cargo). Any future study could utilize this data to pinpoint specific instances of overloading.

Second, we suggest that if sampling techniques be used, the margin of error should be specifically stated.

Finally, any future study should attempt to segregate pier-to-pier containerized shipments, where highway overloads are not at issue, from highway and rail movements in order to narrow the field of "potential" overweights.

Although we are not in favor of further study, we do feel that if one is conducted, it should utilize PIERS data as a low-cost source, for consistency and for accuracy. It may be found desirable to conduct field investigations in order to verify the acccuracy of the data.

(4) (Q.) From your perspective, can the overweight container problem be solved without a legislative solution?

(A.) Initially, SOIC felt that the problem could be solved through a combination of commercial effort and regulatory action. However, as we contemplate the variety of state regulations and grandfather rights, compounded by the multiplicity of foreign weight laws, we have concluded that only Congress can mandate a single, comprehensive and comprehensible solution to which all parties (including the states) will be bound.

(5) (Q.) The FHWA PIERS study showed that U. S. exports are more likely than imports to violate weight limits. Do you agree with that finding? Should efforts to encourage shippers not to overload focus on the U. S. rather than foreign shippers?

(A.) We agree with the PIERS finding; in fact, SOIC anticipated that conclusion. Any effort to encourage compliance should focus on U. S. shippers and receivers equally.

(6) (Q.) Are there economic factors other than per container rates that might encourage overloading of containers by exporters?

(A.) Yes - Four basic factors are: International competition to sell similar products from different sources; land transport costs (truck and/or rail) from origin to port; easy access to overweight permits, notably in the southeastern states; and foreign laws which often permit much heavier weights. These same factors affect imports.

## III. The TRB Truck Weight Study

Although the maritime community has not reached a conclusion on the merits of the recommendations contained in the Transportation Research Board's recently released Truck Weight Study, SOIC has analyzed the impact of their recommended Bridge Formulas.

### (1) Twenty foot containers

The present Bridge Formula encourages the use of longer vehicles in order to maximize weight capacities. Short wheelbase vehicles such as marine containers and construction equipment are severely disadvantaged. Industry has responded by developing so-called extendable chassis at costs approximately double that of conventional fixed frame chassis. While these chassis solve the problem of legal highway weights, there is concern about their safety, stability and driver competence.

Should the TRB recommended formulas be adopted by both the Federal government and the states, the impact on twenty foot container movements would be significant. We estimate that the present conventional 23-ft. long chassis would be capable of carrying an additional 7,800 lbs. of cargo. Should the chassis be equipped with a third axle, it would be capable of accommodating approximately 11,000 lbs. more than the 37,000 lbs. recommended as a result of the March 1988 "Weigh-in" co-sponsored by SOIC at Port Newark, NJ. This would allow ISO-standard 24 metric ton containers to be legally transported over U. S. highways at their maximum gross weight.

(2) Forty foot containers

The analysis for forty foot containers is somewhat different. Presently, forty foot containers are limited to a gross vehicle weight of 77,000 lbs. by the Bridge Formula. The new formula would allow a full 80,000 lbs. gross vehicle weight, resulting in a theoretical cargo load of 48,000 lbs. as compared to 45,000 lbs. at present.

In our earlier statement, we noted that forties loaded to 45,000 lbs. resulted in overloaded tractor axles, presumably caused by shipper loading practices; a phenomenon that is probably impossible to correct, even with an intensive educational program. The recommended formula for vehicles with wheelbase lengths in excess of 24-feet would permit flexibility in the design of 40-ft.chassis and encourage the addition of a third axle, with a resultant increase in load capacity and improved weight distribution across the axles. However, we continue to urge Congress to allow, within limits, transfers of weight from one axle set to another.

We thank you for the opportunity to submit our views.

RICHARD A STALEY CONSULTING
1221 s. buchanan street, arlington, virginia, 22204, USA· telephone 703-671-0829

- Remarks Of -

RICHARD A. STALEY *

- Before The -

Oversight Subcommittee of the
U.S. House of Representatives'
Committee On Public Works And Transportation

[ June 28, 1990 ]
[Washington, D.C.]

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* - Principal of Richard A Staley Consulting, a domestic/international goods movement and operations consultancy

our ref. #ALL-68

## BACKGROUND AND DISCUSSION LIMITS

This discussion of heavier (and larger) intermodal cargo containers is -- in interest of germanity -- restricted to intermodal freight containers moving in international trade, designed/rated in accordance with standards of the International Standards Organization (ISO). Domestic containers and all-U.S. domestic container movements are dealt with briefly in order to dismiss their further consideration.

The origins and development of intermodal freight containers are well known and need not be addressed here. However, it should be noted that a prime cogent facet of ISO procedures concerns the necessity of making ISO standards responsive to changing developing conditions and technologies. Thus ISO limits, testing, etc. must be reaffirmed periodically -- and may be modified or even dropped as conditions warrant. Today's so-called "ISO standard" containers are quite different from those of 20 or even 10 years ago. In the near future, it is expected that ISO standards will again be modified.

Next generation ISO containers will not de-standardize existing units, however, as such is precluded by ISO procedures. Anticipated new international container standards will probably include an added 6 inches in width (to 8.5 feet), box heights higher up to 9.5 feet, lengths of 45 - 50 feet, and possibly some increase in gross masses. Gross mass is defined as maximum total weight of container and load -- not including any highway chassis or tractive unit.

Thus this discussion is, to remain germane to the present subject, limited to

- Intermodal (ISO) freight containers moving in international trade; both out of and into the United States.

Excluded are

- All containers when used for all-domestic U.S. freight movements, regardless of whether the container so used is or is not an ISO approved (or "type") unit.

## Definition of Included Containers

Included in this proposal here are only ISO-type containers moving in international trade -- both into and out of the United States. The appellation "moving in international trade" is considered important as it limits applicability of proposed weight solutions to containers that:

- Are used to move goods into and out of our country; and
- Meet the standards and acceptance requirements of containers constructed, used and tested in accordance with ISO procedures and standards; and which therefore
- Meet the definition of "instruments of international trade" as commonly applied in international practice, conventions and treaties.

ISO containers are of closely-defined sizes and weights, tested rigorously for their ability to maintain integrity under anticipated circumstances during all transport modes that may be used. In general, ISO standards assure that American-built containers fit a British ship, loaded by a French crane in Brazil, unloaded in India and moved on Pakistani highways using a Japanese-built highway chassis. More commonly, ISO standards now allow American auto tires to fit cars built worldwide.

Thus containers included here are ISO "boxes" used only for moving goods between nations -- both into the United States (imports) and out of this country (exports). The latter are often ignored. It should be noted that "instruments of international trade" represent a long-established principle that allows American aircraft to land in England, Argentina, India, etc. without becoming subject to domestic taxes and laws of those nations. Likewise aircraft from other nations can operate into and out of the United States (but usually not domestically) without taxation and without complying with, for example, American labor laws. The same applies to ships of all types. Only domestic safety laws are sometimes applied to such instruments of international trade.

These containers are rated by ISO definitions as to their maximum total mass; i.e., empty unit weight plus maximum cargo weight for which the box is certified and tested. This is the ISO certified maximum box weight. It can -- especially with regard to shorter (20-24 feet in length) containers -- exceed current U.S. highway gross/axle limits. Tank containers of some 20 feet in overall length are most usually singled out in this regard.

## Further Definition of Excluded Containers

As noted earlier, containers that are not to be considered in this proposal fall into two categories, both of which encompass strictly domestic movements (domestic insofar as moving within the United States). Thus excluded units are:

- o Containers which may or may not meet ISO standards, but which are designed/used exclusively in the U.S. for domestic cargos; and
- o ISO international containers when used for strictly domestic U.S. movements (origin and destination intranationally) including "repositioning" domestic movements whilst being transported between U.S. locales of container surplus to U.S. locales of container shortages.

With the increase of containerization, there is an increasing -- and now significant -- volume of containers used for strictly domestic freight movements. Originally these were simply repositioning movements of international units. They were made to balance box supplies with needs location-wise. International agreements and U.S. Treasury regulations exempt some such movements from being subject to U.S./state taxes and jurisdiction. The rules are somewhat complex but basically limit domestic movements of international containers to a single repositioning trip, not necessarily in the direction of an eventual port of exit. They also impose a time limit for the presence of an international container inside the U.S., before it is considered to have become "domesticated", subject to duties and property taxes.

This has all led to a proliferation of containers never intended or designed to move internationally. These are strictly domestic-use containers intended to move only via rail (double stack) and via highway (on chassis trailers). They are often not ISO containers simply because they are not designed to withstand rigors of sea travel. (An ISO container's most rigorous test simulates on-deck loading on a ship's bow on a North Sea winter voyage.)

Domestic-use only containers also tend to exceed ISO length and height limits, and in other ways are oftimes ineligible to be called "ISO boxes". They are usually also of far lighter, less durable, construction.

## The Current "Overweight" Container Problem

At present, the United States considers there to be a significant problem vis-a-vis U.S. highway movements of intermodal freight containers exceeding permitted axle and/or gross weights. This perceived problem has led to government and trucking industry protests, resulting in FMC decisions that pleased few. The problem has been "confirmed" by container weighing (PIERS) as well as by voluminous other materials -- and by this hearing.

The basic situation is that both international and domestic containers now oftimes exceed Federal and/or state axle and/or gross weight limits. Ship and port operators are blamed, and indeed these entities sometimes do pass such units shoreward. However, some ports/states offer incentive overweight permits to attract container traffic.

But why? Simply because

(a) these containers are within ISO limits, and

(b) these boxes are legal in the nation where they originate or are destined; and

(c) it costs little (or even nothing) to carry and handle a heavy container vs. a light (or even empty) unit.

This last is often overlooked by those not intimately involved in containerization. Costs are unit rather than weight oriented and driven.

## A PROPOSED SOLUTION

I propose a simple solution to this situation that would have a number of additional benefits to the United States and its foreign trade. In brief, I propose issuing a blanket Federal exemption for all ISO-certified container movements into and out of this country in international trade. This exemption would assure that such container movements, regardless of country of ownership or registry, could be exempted from our domestic axle and gross weight limits --

as long as the container was loaded in accordance with its ISO certification and was moving strictly in international trade.

Such exemptions would not be available for any intermodal container movements which begin and end within the United States, including repositioning domestic movements of otherwise international units. Of course all movements of domestic-type containers, as earlier discussed, would not be exempted.

Advantages of this approach include:

- Recognition that intermodal, international containers are instruments of international trade and should be so treated.
- Improving American competitive stature worldwide. At present U.S.-originated containerized products sometimes cannot compete internationally simply because we cannot load as much product per container as other nations can.
- Recognition that the U.S. is a serious international partner in import-export trade, and that by adopting this strategy we may better urge other nations to permit the longer containers that are preferred here.
- Ending such current evasive strategies as overloading domestic containers in order to take advantage of the present situation. As noted, domestic container movements would be barred from receiving any exemption.
- Directly aiding in implementing at least one of the action strategies in the USDOT's Statement of National Transportation Policy; to wit, (p. 122) "Increase efforts to harmonize international standards for transportation equipment and international trade and transportation procedures."
- Providing a fair solution to the problem that brought forth the present hearings by providing both protection for our highway infrastructure while, at the same time, a real world tool to improve America's foreign trade posture.
- Lastly, by providing another incentive to solutions of all heavy vehicle problems, such as may be found in implementation of the Turner Vehicle principle, or similar, whereby vehicles may safely operate on America's highways at higher gross, but not axle, weights.

# ADDITIONS TO THE RECORD

CALIFORNIA
TRUCKING
ASSOCIATION

West Sacramento
June 22, 1990

The Honorable Glenn Anderson
United States House of Representatives
Rayburn House Office Building
South Capitol Street & Independence Avenue
Washington, DC 20515

Dear Congressman Anderson:

These comments are submitted in reference to the Investigation and Oversight Subcommittee of the House Public Works Committee hearings on overweight containers.

California Trucking Association (CTA) has a major interest in finding solutions to the serious problem of overweight containers transported over our highways as part of the intermodal transportation system. CTA is the largest state trucking association in the United States, and members of our Intermodal Conference transport the bulk of intermodal containers to and from California's intermodal rail and port facilities. California's ports of Los Angeles, Long Beach, and Oakland rank 2, 3, and 4 in North America, and combined represent almost 40% of all container movements through major North American ports.

Simply put, overweight containers are a major problem because those who gain the tremendous economic benefit from over-loading do not risk the economic consequences of their activity. Shippers who overload profit handsomely from their illegal actions, while trucking companies and their employees face the criminal, economic and safety consequences. We believe it is time for Congress to step in and force a national solution to this growing problem.

Studies by both the Federal Highway Administration (FHWA) and California Highway Patrol (CHP) show that overweight containers are a very serious national problem. Recent FHWA analysis determined that between 26-39% of all import/export containers are potentially overweight. Field studies conducted by CHP have shown up to 72% of container trucks weighed near California ports to be overweight. This compares with an approximate 1% overweight factor of all trucks weighed at California CHP scales during the same period.

Although gross weight violations are a concern, axle overweight problems are even more serious. While shipping documents sometimes provide gross container weights, scales are seldom made available at intermodal facilities to determine if each axle is loaded within

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legal limits. A recent study conducted at Port Newark/Elizabeth, New Jersey showed that although a shipment may fall within the overall gross weight limit, uneven weight distribution inside the container will often cause individual axles or tires to be overloaded.

Since scales are not available at intermodal loading facilities to check the accuracy of gross and axle weights, truckers are forced to move containers onto public roads without knowledge of their true weight. Truck drivers are subject to criminal prosecution while traveling to the nearest scale to check weigh their load. If the container is then determined to be overloaded, the truck driver is generally stuck with the problem as the intermodal facility refuses to take the load back or make it legal.

Overweight fines can be very expensive, particularly in California, often totalling thousands of dollars. Most trucking companies and truck drivers are not in a position to be able to obtain reimbursement for overweight fines as the party who is responsible for the improper loading is not cited and simply refuses to pay. The end result is that penalties and fines are levied against the party that does not load the container, has no way to determine the containers legal weight, does not economically benefit from the overload, and has the least ability to control the reoccurrence of future overloads.

Further compounding the overweight problem is the incompatibility of truck weight laws among various states across the country. States have been allowed to adopt varying interpretations of the Federal Bridge Formula, resulting in situations where containers loaded legally in New York or Chicago are overweight in California, and those loaded legally in California are overweight in Hawaii. California, for instance, modified the federal Formula B weight table in such a manner that certain 5 and 6 axle intermodal container combinations are penalized by as much as 5500 pounds per load. Containers loaded legally throughout the country are overweight in California.

Intermodalism has a broad scope and the overweight container problem demands a national solution. Individual state laws will only serve to further confuse the issue or divert freight from one state to another. California Trucking Association suggests that Congress consider the following action:

1. Enact a federal law to penalize the shipper or the owner of the goods for overweight violations.
2. Enact a federal law to give truck operators the opportunity to check weigh the load at the nearest scale (within a reasonable distance) before being subject to any fine, or require that all intermodal facilities make a scale available to check weigh trucks.

3. Require all states that have not fully adopted the federal Formula B weight table (including California) to do so.
4. Require the Federal Maritime Commission adopt regulations to limit overweight containers submitted for shipment and allow ocean carriers to refuse or reload overweight containers.

Thank you for considering our comments. We believe that the overweight container problem will continue to escalate until those profiting from overweights begin to suffer the economic consequences of their action.

Sincerely,

Thomas C. Schumacher
Executive Vice President

TCS/pfb

**CRASH** CITIZENS FOR RELIABLE AND SAFE HIGHWAYS

June 27, 1990

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PUBLIC WORKS AND TRANSPORTATION COMMITTEE
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The Honorable Glenn M. Anderson
Chairman
House Public Works and Transportation Committee
U.S. House of Representatives
2329 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

We are aware you have scheduled Investigations and Oversight Subcommittee hearings on the road damage and safety effects of overweight containers for June 27 and 28. As Executive Director of Citizens for Reliable and Safe Highways (CRASH), I am writing on behalf of our Board of Directors to advise you of our support for your efforts to make our highways safe.

CRASH is a nationwide, grass roots coalition whose purpose is to reduce the number and severity of truck-related crashes. Our goals are to stop proposals to increase the size and weight of trucks on America's highways, reduce the number of fatigue-related accidents by requiring on-board recording devices to accurately record speed and distance violations, reduce truck crashes caused by drug and alcohol abuse, and remove unsafe, poorly maintained big-rigs from the roads.

With respect to the scheduled hearings, we support strict enforcement of federal and state size and weight limitations on containers and trucks traveling on our nation's highways.

It is our understanding that representatives of the trucking industry share our concern about the safety hazards associated with overweight containers and support enforcement of current weight restrictions. However, we find this position inconsistent with their actions designed to radically increase the size and weight of over-the-road trucks.

Trucking company representatives focus solely on overweight containers and do not take an equally strong position against operation of over-the-road trucks which in many parts of the country are permitted to operate with gross vehicle weights in excess of federal limits. For example, for $5.00 each, trucking

**CITIZENS FOR RELIABLE AND SAFE HIGHWAYS**
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companies in Missouri and South Dakota routinely buy "overload permits" that allow them to run trucks that are 25,000 pounds overweight. Last year in Texas, 368,000 special permits for overweight trucks were issued for $20 each.

Both overweight container trucks and overweight trucks running under special permit are hazardous. Both practices should be ended.

As the hearings for the Reauthorization of the Post-Interstate Surface Transportation Programs proceed, we hope there will be an opportunity to fully explore safety considerations in this regard.

Sincerely,

Anthony Garrett

Anthony Garrett
Executive Director

# STATEMENT OF GEORGIA-PACIFIC CORPORATION

To the Committee on Public Works and Transportation
U.S. House of Representatives
Investigations and Oversight Subcommittee

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Oversight Hearings: Movements of Intermodal Containers by Trucks

June 27-28, 1990

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Submitted on Behalf of G-P by John M. Turner,
Corporate Director - Government Affairs,
1875 I St. NW, Suite 775
Washington, D.C. 20006
Tel. (202) 659-3600

Georgia-Pacific Corporation (G-P) requests that this statement be included as part of the official record of the Oversight Hearings on Movements of Intermodal Containers by Trucks.

G-P is a forest products and paper company, headquartered in Atlanta, GA. The company has over 400 business operations in 48 states and utilizes intermodal transportation in the export of its products. We are a Fortune 50 company with transportation costs in excess of one billion dollars annually.

We urge the Subcommittee to take no legislative action on the allegations by the American Trucking Association and the South Europe/USA Freight Conference that overweight containers pose a problem to safety and the highways. we do not believe the above organizations have presented sufficient evidence to indicate a problem of overweight containers exists.

Much reliance has been placed on the Journal of Commerce PIERS data that was analyzed by the Federal Highway Administration. It is apparent that the data did not demonstrate that overweight containers were traveling on the highway system. The data only addressed containers already in the port facilities and there was no correlation that these containers traveled on the highways in an illegal or overweight condition. State highway agencies have a special permit system for overweight vehicles. In many cases, the containers are reloaded in the port area before being placed on ships. The PIERS data, therefore, should not be misused.

The Federal Maritime Commission examined the question of "overweight" containers in two official petition proceedings and decided correctly that the petitions of the ATA and ocean carriers was insufficient to warrant a rulemaking that per container rates for certain commodities such as pulp, paper, plywood and other wood products should be prohibited. G-P filed comments in both proceedings in opposition. We believe the FMC made a correct determination based on available facts.

Paper and wood products tend to be heavy, yet represent an important export product for the U.S. To be competitive with foreign competitors, shipboard containers should be fully utilized. The weight problem should be "highway" related and should not be used by the ocean freight carriers as an excuse to raise rates or discriminate against certain classes of products. Carriers have created the per container rate system and they have the capability of restructuring a rate system at any time. They should not ask Federal agencies or the Congress to condone a biases against certain products.

If a highway weight problem exists, the state governments have in place an effective system of enforcement standards and penalties for violations. G-P encounters the weight laws everyday in moving product by truck from mill to market. We do our very best to comply with these standards and have no policies that encourage overweight trucks or containers.

In summary, we believe shippers and carriers have the capability to address overweight containers---where they exist---and Congressional intervention at this time is premature and unnecessary. The states are doing an effective job of policing weight laws on the highways. If carriers do not like the per container rate practice, there are available procedures to address this practice. Overweight allegations should not be allowed to justify discrimination in pricing against certain products that tend to be heavy.

It is to the carriers best interest to help shippers remain competitive in Europe and other overseas markets. They should be working with--- not against---their customers.

G-P urges that more study be directed to the highway situation to determine if a problem exists that weight laws cannot address, and that carriers be urged to work with shippers where a problem can be shown to exist.

G-P also wishes to go on record in support of statements presented by the American Paper Institute, the National Forest Products Association and the National Particleboard Association. We are members of these three trade associations and export products represented by such organizations.

# STATEMENT FOR THE RECORD

BY

THE NATIONAL FOREST PRODUCTS ASSOCIATION

FOR THE

SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

HEARINGS ON MOVEMENTS OF INTERMODAL CONTAINERS BY TRUCKS
JUNE 27 AND 28, 1990

OF THE

UNITED STATES HOUSE OF REPRESENTATIVES

WASHINGTON, D.C.

The following statement is submitted to the Subcommittee on Investigations and Oversight for inclusion as part of the permanent record of the subcommittee hearings on June 27 and 28 to explore possible road damage and safety concerns regarding overweight trucks.

The National Forest Products Association (NFPA) is a national industry trade association representing the vast majority of the nation's production and sale of lumber and processed wood products. The forest products industry was the third largest agricultural exporting industry last year with exports of over $6 billion. The forest products industry is an internationally competitive, export oriented industry, committed to continued growth in overseas markets.

NFPA is committed to the safety of all persons involved with the forest products industry, and is concerned about highway safety. The industry routinely employs shipping practices that prevent overloading of trucks that travel the nations's public highways. To avoid overloading ocean transport containers, consolidation of such containers is often done at port facilities. Industry members also utilize properly loaded flat-bed trucks to transport products to port facility industrial free zones. Additionally, it is increasingly common for wood producing companies to ship containers via rail lines, thus entirely avoiding the need for any truck traffic.

The wood products industry cannot continue to develop its products as viable export commodities without a stable and fair shipping cost environment. NFPA is concerned that unnecessary shipping regulation would result in transportation rate increases that will seriously disrupt and erode the viability of wood products as export commodities.

## Federal Maritime Commission's Review of Recent Overweight Container Petitions

NFPA members had a substantial interest in two petitions recently considered by the Federal Maritime Commission (FMC) for rulemaking on the subject of "overweight containers". Petition # P3-89 sought a rulemaking procedure to prescribe maximum container weights for various size containers and Petition # P4-89 sought a rulemaking process to eliminate the "per container" rates on specific commodities, including wood products, that have been alleged to be prone to overloading.

Of the 77 comments received by the FMC, 17 (22%) were from NFPA members. They opposed FMC consideration of the petitions stating that FMC intervention in policy development and enforcement of safety matters on the nation's public highways is inappropriate. NFPA is on record as opposing the two petitions and applauds the recent FMC decision to deny the petitions "for failure to demonstrate an appropriate supporting basis for action requested."

These two petitions, if approved, would have had serious detrimental impacts on U.S. wood products exporters' economic viability by:

- increasing shipping costs as the supply of available containers for exports dropped;
- increasing shipping time as additional containers would take up additional room on board ship, forcing some shipments to remain at the dock;
- increasing costs as additional containers were hired to ship the same amount of goods;
- decreasing competitiveness because the added expenses would have been passed along to overseas consumers, making U.S. wood products less price competitive.

It is the opinion of many within the industry that the two petitions did not have safety as their essential goal, but rather the imposition of unwarranted rate increases. Any increases in product transportation costs would erode the export potential of the wood products industry at a time when the industry is continuing a major expansion of exports, in part supported by federal export marketing and promotion programs.

## PIERS Study

The two FMC petitions were based in large part on data collected for the Federal Highway Administration (FHA) report "Analysis of Port Import/Export Reporting Service (PIERS) Data to Reveal Potentially Overweight Container Movements on America's Highways". This study presented what appears to be a pattern of widespread abuse of highway weight laws. However, we believe there are serious flaws in the PIERS study that make it an unreliable source upon which to base any further congressional or administrative regulation.

The study does not reveal enough about its data base and its analytical assumptions to allow for useful conclusions. There is, for example, the possibility that the magnitude of the overweight container problem is overstated by the improper inclusion of truck movements within industrial free zones, or other zones where generalized weight limitations are appropriately relaxed. The study does not reflect whether containers were moved on special state permits or on specialized vehicles exempt from highway limits. Additionally, there was no matching of actual containers to particular trucking equipment and not a single shipment was actually weighed.

The FMA itself concluded that their findings can only be applied to the potential for overweight containers. This mean that the FHA could not definitely conclude there is problem with the overweight containers, nor could they quantify the degree to which such a problem exists. In their report the FMA states that "without a comprehensive data base on movements by container-carrying trucks in the U.S., it is not possible to estimate the number and distances of highway trips by these vehicles, or to estimate the amount of damage that these vehicles generate for highway pavements and structures."

Because of these and other flaws, it is our opinion that the PIERS study cannot be used as a reliable basis for evaluating the "overweight container" issue and determining possible policy recommendations. Instead, we believe some other recognized, independent body should be charged with conducting an accurate and comprehensive study in order to facilitate responsible action on this issue in the future.

## Conclusion

At this time, in the absence of accurate data, we believe it would be premature for any meaningful assessment of the "overweight container" problem. As mentioned above, a definitive study of container loading would be essential to evaluating potential problems and developing solutions to those problems.

NFPA supports current Federal and State highway laws governing gross weight vehicle limits and bellieves current laws establish adequate standards and/or penalties when violations occur. Our members endeavor to abide by these laws and, if deemed necessary, would support further strengthening of existing safety enforcement mechanisms to ensure highway safety. Weighing of containers will monitor and solve problems without increasing transportation costs. We believe that it is more appropriate to work with specific shippers when problems occur. Solutions lie in cooperative effort between carriers and shippers who wish to find solutions that are mutually beneficial.

Statement of Thomas W. Neill

President

Regional and Distribution Carriers Conference, Inc.

on

Overweight Containers

Before the

Subcommittee on Investigations and Oversight

Committee on Public Works and

Transportation

U.S. House of Representatives

September 13, 1990

## Statement of Thomas W. Neill

My name is Thomas W. Neill. I am president of the Regional and Distribution Carriers Conference, Inc., and president of L. Neill Cartage Co., Inc., Berkeley, Illinois. I appreciate the opportunity to present our views on the issue of overweight containers.

The Conference is the national trade association representing motor carriers that specialize primarily in local and regional freight distribution. The Conference's more than 300 members are principally family-owned businesses or closely-held corporations who operate in one or more states, delivering and picking-up general freight. They provide the essential link that gets goods delivered to stores and factories in thousands of communities across the nation. It is affiliated with the American Trucking Associations.

A sizable number of Conference members engage in intermodal movements and drayage; thus the subject of overweight containers is of direct material importance to the Conference. In this regard, the Conference associates itself with the testimony of the American Trucking Associations delivered today.

Overweight containers pose a safety threat to carriers and impose a legal burden on them. Illegal, overweight containers put the truck driver and the motorists with which he shares the road at risk. Unfortunately, the trucking industry does not have any control over container loading practices. Worse yet, shippers have a powerful incentive in the form of container rate pricing to overload containers.

The Committee can readily appreciate the problem that faces our drivers when they arrive at an intermodal facility to pick up a container. They usually do not know its true weight and don't have any ready means to determine it. Moreover, they are under pressure to move the container according to an agreed schedule. The result all too often is that the truck driver gets cited and fined for the overweight violation, thus unfairly incurring a legal liability. An overweight citation and fine may be the least of the driver's worries if the overweight container causes an accident that results in injury, death or substantial property damage.

It is simply unfair that truckers, who have the least control over the weight or condition of the container, bear virtually all the safety and legal risks of delivering the container to the consignee. The shipper who overloads the container is not liable for his actions. Indeed, the shipper and the receiver of the cargo enjoy the benefits of overweight containers while the trucker and the motoring public are stuck with all the risk.

The American Trucking Associations has attempted resolve this problem over the past two years informally through the private sector and formally by petitioning the Federal Maritime Commission. These attempts have failed to elicit any meaningful solutions.

The Regional and Distribution Carriers Conference believes the time is ripe for Congressional action, given the absence of progress in either the private sector or through the appropriate government agencies. Congress should be guided in its actions by the following three simple precepts: knowledge, recoupment and protection.

o Motor carriers have the right to know container and axle weights before they leave ports, rail ramps or a shipper's dock.

o Motor carriers should be entitled to recoup fines, penalties and other costs from the party that tendered the load if they were given incorrect weight information.

o Motor carriers who refuse to carry unsafe, overweight loads should be protected from retaliation.

Specifically, the Conference urges the Congress to enact legislation along the lines of that proposed today by the American trucking Associations that gives the Secretary of Transportation the authority to penalize those parties who tender overweight shipments to motor carriers. Such legislation should do the following:

o All persons tendering shipments to motor carriers must verify in writing the weight of the shipment.

o Anyone submitting false or erroneous weight verification to a motor carrier should bear the full criminal and civil liability.

o Create a lien on the goods being transported equal to the amount of fines, penalties or other liabilities arising from the incorrect verification.

o If a carrier accepts a load without weight verification, both parties should be subject to fine or punishment.

o Provide protection for motor carriers from economic retaliation by shippers and others for refusing to transport an overweight shipment or otherwise violate highway safety laws and regulations.

o Provide protection for shipper employees who are disciplined or punished by their employer for refusing to violate safety laws similar to that currently provided motor carrier employees under 49 U.S.C. 2305.

These proposals are the basis of a solution to the overweight container problem. The Regional and Distribution Carriers Conference urges the Subcommittee to pass legislation that embodies these points. The sooner this is done, the sooner a major threat to highway safety and the excuses for regulatory agency inaction will be removed.

# TESTIMONY OF
# WILLIAM P. VERDON
# PRESIDENT
# UNITED SHIPOWNERS OF AMERICA

BEFORE THE

INVESTIGATIONS AND OVERSIGHT SUBCOMMITTEE

HOUSE PUBLIC WORKS AND TRANSPORTATION COMMITTEE

JUNE 28, 1990

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Mr. Chairman and members of the Committee, I am pleased to appear before you today to discuss the overweight container problem in the United States. The United Shipowners of America (USA) is a trade association representing more than 99% of the U.S.-flag liner fleet in the foreign commerce of the United States. Our member companies are American President Lines, Ltd., Central Gulf Lines, Inc., Crowley Maritime Corporation, Farrell Lines, Inc., Lykes Bros. Steamship Co., Inc, Sea-Land Service, Inc., and Waterman Steamship Corporation.

USA members are engaged in the transportation of containers in domestic and international trade. These containers are commonly loaded at an inland point and transported by rail or highway to a port, and subsequently carried in ocean commerce by common carrier to the destination port, where they again travel by rail or highway to their final destination. The containers are usually loaded by the shipper, closed, sealed, and transported by truck to the rail head or ocean terminal. From the time the container leaves the loading dock until it reaches its final destination, the integrity of the seal remains intact. Since the advent of containerization more than thirty years ago, the truckers, railroads and ocean carriers have relied on the shipper to provide an accurate description of the contents and, in some cases, the weight of the cargo. Since there are liability problems associated with re-opening a sealed container, it is imperative that the shipper correctly state the contents and weight of the cargo on the manifest.

Though it is a recognized fact that overweight vehicles have been traveling across U.S. roads, the Federal Highway Administration/PIERS' study conducted last year was one of the first attempts to make a relative determination of which commodities tend to contribute most to the overweight container problem, and through which ports these commodities move. Interestingly enough, the Report also showed that 38% of 40 foot export containers were potentially overweight, compared to only 17% of 40 foot import containers. This suggests that overweight containers are found in both imports and exports.

While the FHWA/PIERS study is a good starting point for the evaluation of the overweight vehicles problem, it only takes manifested overweights into account- not containers that have been mis-declared at a much lower weight than the actual weight of the container. The PIERS study also focuses only on potentially overweight containers, and does not take into account various trucking equipment and container packing methods which can make the difference between rendering a container movement safe and legal, or illegal. USA believes the PIERS study does not realistically portray the complexities associated with accurately determining whether a container is overweight.

Many factors can contribute to making a container overweight. In addition to the inconsistent State and municipal road/vehicle weight limits, it is possible for a container carrying vehicle to violate legal weight limits because of excessive gross vehicle weights (cab or chassis), excessive axle loading, or a combination of both. For international shipments the problem is exacerbated by foreign gross vehicle weight limits that differ from, and in many cases, exceed those of the U.S. For instance, the European community is considering adopting a uniform highway weight limit of 88,000 pounds - 8,000 pounds more than the maximum weight allowed on interstate highways in the United States.

Even though 80,000 pounds is the maximum gross vehicle weight allowed on U.S. interstate highways, several states and municipalities offer permits which allow for the transport of heavier containers. For instance, the state of Maryland offers a permit costing $1.00 per year which allows for transport of a 40 ft. container with tractor and chassis weighing up to 89,000 pounds to be transported to and from Maryland ports. The state of Florida offers annual permits to allow the operation of 90,000 pounds gross vehicle weight on designated routes, and Idaho allows gross vehicle weights of 105,500 pounds on its state roads. On a local level, the Port of Oakland offers permits which allow for container carriers involved in intermodal transfers (i.e., from ocean carrier to train) to move loads on specially designated streets of up to 15,000 pounds above the California legal weight limit.

If the differing state limits for gross vehicle weights are not complicated enough for shippers to deal with, there is also an axle weight restriction. The measurement of weight distributed directly over any set of axles cannot exceed 20,000 pounds for a single axle and 34,000 pounds for tandem axles. States and municipalities may also have weight variations for the maximum axle load while still retaining the 80,000 pounds gross vehicle weight limit.

The final weight limitation governing containers is the distribution of weight between axle settings. For instance, a 20-foot container may be grossly overweight on a short chassis, but may fall within the gross vehicle weight limit if it is transported on a longer chassis. The combination of distance between extreme axles, and the number of axles on a vehicle combine to provide the maximum gross vehicle weight using the Federal Bridge Formula as a means of calculating the total.

In addition to the varying weight restrictions throughout the United States and the rest of the world, another factor contributing to the overweight container problem is the existence of per container rates for a wide variety of commodities.

Under the recently rejected rule proposed in FMC petition P4-89, per container rates would have been prohibited for certain commodities most likely to contribute to the overweight problems, starting with those listed in the PIERS study. USA commented on that petition, stating that we are in favor of eliminating selected per container rates which may provide an incentive to overload containers. Of the over 90 comments received from interested parties, the FMC found that ocean carriers, truckers and ocean conferences supported the petitions, while shippers and NVOCC's opposed the petitions. USA regrets that this attempt to solve the problem was rejected.

While USA is disappointed by the FMC's rejection of petition P3-89 and P4-89, we realize that in most instances a container does not become "overweight" until it is placed on a chassis and then transported on roads. In fact, a container can easily fall within ISO safety standards and be safe for rail travel, but be classified as overweight once it hits the road. Thus, the FMC is the appropriate federal agency to oversee the elimination of some per container rates; it is not the appropriate agency to deal with trucking issues.

Recognizing that the variety of weight restrictions are confusing at best, and that the FMC has decided to deny the two petitions, USA believes that shipper education is the first and most important step in overcoming the overweight container problem. Shippers, or those that pack the containers, need to be made aware of differing weight restrictions from state to state, and country to country. The shipper also needs to learn how to pack a container so the weight is properly distributed over the axles.

Besides shipper education, USA also believes that each port area should have easily accessable scales, enabling the trucker to check on questionable weight loads.

If overweight, the trucker could, as one example, return to the port area to adjust the vehicle load within the legal limit. If the container is so overweight that it cannot be resolved by exchanging the chassis, then the container would have to be unstuffed and restuffed to adjust the over axle weight, and if this was not feasible, the cargo would have to be separated into two smaller, lighter loads. Any costs, including liability for lost or damaged cargo, would have to be borne by the shipper and/or importer-exporter of record. The economic burden would deter the shipper from tendering overweight containers.

While scales in centralized port areas would stop the inflow of overweight containers into the United States, this would not rectify the problem of overweight container carrying vehicles moving from an inland point in the U.S. to a port area. Thus, USA believes that municipalities, or privately owned entities within a municipality, should provide facilities for weighing commercial vehicles before they travel on public highways. As the PIERS study showed, the number of potentially overweight export containers exceeds potentially overweight import containers.

Just as scales must be available in all terminal areas and municipalities, all parties must be responsive to the overweight container problem. Competitive pressures dictate that all carriers and terminals be subject to the same regulations and that these regulations be enforced equally. If a particular ocean carrier or terminal is viewed as being capable of accepting of overweight containers, all other carriers and terminals will become economically disadvantaged vis-a-vis the carrier or terminal that accepts overweight containers.

The overweight container problem is enormously complicated, and there are no easy solutions, as I am sure you have realized through your investigations. USA believes that the solution ultimately lies with the shipper, or the person that packs the container. USA also believes that the existence of scales at ocean terminals and inland points will be a welcome step toward a solution. USA also believes it would be premature to seek a conclusive remedy at this point, but believes that some steps should be taken. Thus, USA requests Congress to legislate the elimination of per container rates, as the first of many steps toward solving the problem. I hasten to add that USA has been working on this problem since the inception of the trade association, and on a company by company basis for several years. In fact, several USA members are involved in a task force comprised of shippers and ocean carriers, organized to resolve the specific problem of overweight containers being transported on U.S. roads.

Mr. Chairman, I would like to conclude my statement by saying that despite the confusion surrounding the overweight container problem, the responsibility for loading containers that will comply with highway vehicle weight laws rests solely with the shipper, or those that pack the container.

Mr. **Anderson**. We stand adjourned.

[Whereupon, at 12:55 p.m., the subcommittee adjourned.]

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